

THE MANUSMRITI - A CRITICAL STUDY

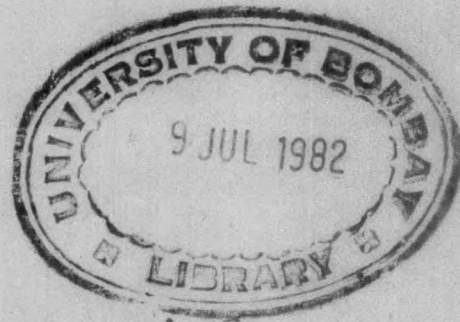
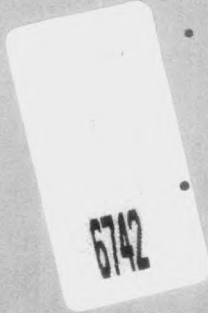
A thesis submitted
to the
University of Bombay
for
Ph. D. Degree
Under the guidance
of
Dr. P. M. Upadhye
Head of the Dept. of Sanskrit
Parle College, Bombay-57

by

SMT. APARNA DAS GUPTA
Parle College, Bombay-57

March 1980

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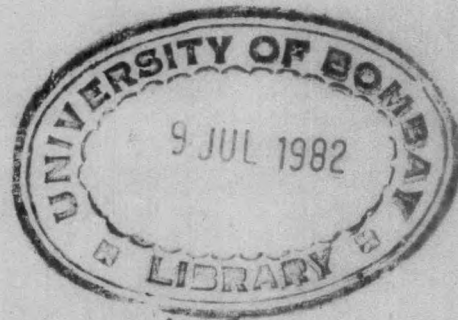
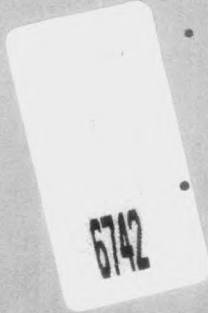
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P R E F A C E

The significance of Manusmṛti is not limited to any age or culture. Words Mānava, Mana and Manu have been derived from the same root and thus pervades the total thought process of Mānava.

As far as India is concerned Manusmṛti still guides the lifestyle of countless millions from Kāśmīr to Kanyākumārī. In that sense this is the Smṛti which holds people of India together and makes the country what it is. Religions such as Christianity and Islam have also adopted many features of Manusmṛti. Thus the power of Manusmṛti undeniably is very great and relevant to India.

Therefore I felt that I should contribute my little bit to the study of Manusmṛti not merely to study a code of law but also to study the psyche of this great country. I also wanted to understand with what strength the Hindu has fought silent battle against almost a thousand year of foreign rule.

But it is not the past which is as important as the thousand years that lie ahead. My small effort in studying Manusmṛti has led me to the belief that modern India should to a large extent be guided by Manu and that persons more competent than I am should continue to study this Smṛiti

and point out the relevance of Manu in modern India.

In my studies of Manusmṛti and preparation of this thesis I have at every step been guided by Dr. P.M. Upadhye, Prof. of Ancient History, Bombay University and Head of the Department of Sanskrit, Parle College, Bombay, and grateful thanks are due to him.

I have discussed my ideas with many friends and scholars who have all contributed towards formation of my ideas. However, it is necessary that I specially thank Sri D.S. Savle, who has put me directly in touch with culture as it exists in the rural areas and Prof. Ashoke Maity of Seva Bharati Mahāvidyālaya, who have suggested readings of Marxist Literature for understanding material base of Hindu Culture.

I would specially like to thank Prof. P.K. Sen, Prof. Emeritus of Indian Council of Agricultural Research, Calcutta University and my revered father, who has challenged my ideas at every stage and thus forced me to think deeply before putting my ideas on paper. I am also grateful to my husband Prof. S. Das Gupta, National Institute of Bank Management, who has helped and encouraged greatly in every step of this venture.

Before I conclude I pray:-

दानारो नोऽश्विर्धन्तां वेदाः संततिरेव च ।
श्रद्धा च नो माव्यगमदूह देयं च नोऽस्त्विति ॥२५९॥ III

"May Liberal men abound with us. May our
knowledge of the Vedas and our progeny thrive.
May faith not leave us. May we have enough
to give." M.S. III 259.

Bombay-50

Dated: 18.3.80

Aparna Das Gupta
- Aparna Dasgupta -

ABBREVIATIONS

Aitareya Br	...	Aitareya Brāhmaṇa
ŚAŚ G.S.	...	Āśvalāyana's Grhya Sūtra
M.S., MS and Manu.	...	Menusmṛiti
• Rgveda	...	Rgveda
S'B.	...	Satapatṭha Brāhmaṇa
S'. Br.	...	Satapatha Brāhmaṇa
Sū	...	Sūkta
Yāj	...	Yājñvalkyasmṛiti
V.	...	Vālmiki



STATEMENT UNDER 0.771

My critical analysis of Manusmriti has been an attempt at evaluation and appreciation of the great work in terms of -

- a) Objective conditions which gave rise to social phenomenon as recorded by Manu.

- b) Present day need of the society and how Manusmriti may help us in reformulating social values.

However to be able to do this I have studied literature on modern social ideals as well as literature which throw light on society in India and abroad in historical perspective. I have also studied critical literature on Manusmriti and other relevant works of the period. Though the study of the literature referred above and listed in Bibliography I have formed certain opinions and have expressed them with due substantiation in the text. I would like to present the most important of these ideas in the form of a summary for the convenience of readers. To further aid readers of this work I am presenting below my thesis as they emerged through various chapters.

Dharma - Manu combines many roles into one in his Smṛti. He is a Law giver, an upholder of moral code as well as a social philosopher. Thus Dharma as propounded by Manu is not merely religion but contains the seeds of all social sciences.

In propounding Dharma his focus has been on collective good and attainment of social and individual contentment through non-injury i.e. Ahimsā. Thus end

that is contentment had to be achieved without injuring, depriving or hurting others.

I find that this basic regard towards Ahimsā has led Manu to define the society in terms of hierarchy (Varna), duties and values. Together these three aspects form Dharma.

The word "Dharma" is often used as synonymous to the word 'Religion', however it is erroneous to do so. The two words express many concepts which have much in common but they are not identical. Therefore I have concentrated on highlighting most important aspects of Dharma, and contribution that it has made and what it can contribute in future.

I have tried to establish that Dharma is an attempt to integrate individuals to society through peaceful means. To do this Manu had relied on -

- a) development of values
- b) fixing priorities in life
- c) acceptance of duty towards self, family, society and ancestors.
- d) establishment of a firm code of conduct.

Relevance of Dharma is not lost today and integration of individual to society is emerging as a serious problem in modern societies. Therefore spread of

"Dharma" (not religion) through mass education should be undertaken. I venture to add that Dharma as described in previous paragraph should be ideal components of any man's education programme.

Women

Manu has been much criticized as being the cause of degradation of women in ancient India. Such misconception arises out of a romantic notion that during the Vedic time women enjoyed equality of status and occupation with men. There may have been some equality so far as that women were given education. But even here I have shown that women were essentially taught at home while men at Gurugrha. Thus seed of inequality between men and women was inherent in the society.

Consideration of historical causes of degradation of status of women leads to us believe that the concern of the Aryans in maintaining racial purity was at the root of lowering of status for women. A lower age of marriage for women came to be accepted in the society leading towards deprivation of education to women.

Difference in age between husband and wife on the one hand and educational status on the other gave men a higher status in the society.

The most disputed sloka in which Manu compares women to Sūdra is controversial not only because of its content but also because of its contradiction to various other slokas in Manusmriti. Position of women and Sūdras were not the same during Manu's time. Manu has repeatedly advised men to make women happy and concept of Ardhangī is well accepted by Manu. He has also not advocated any pollution from touch from women which was a clear mandate against a Sūdra. Instead women's participation in religious performances ^(w) were essential for householders. Thus I have shown that this sloka is in contradiction to the spirit of many other slokas in the Smṛti.

The other statement of Manu for which he is often criticised is his sloka regarding the protection of women throughout her life. This sloka has been interpreted to me ~~an~~ lack of freedom however my analysis leads me to believe that the concern for protection of women arose out of concern for maintenance of racial purity which has been the bias, not only of Manu but of entire Hindu Society throughout the ages.

Marriage

Manu has given much importance to marriage which was already a fully evolved system in Manu's time. Manu

discourages marriage within Sapinda and Sagotra which is a scientifically correct stand. However, Sagotra has lost its meaning due to great dispersal of the gotras throughout the country. Manu encourages Anuloma marriages again which is a scientifically correct stand. However, my own suggestion is that along with Anuloma interstate and inter-caste marriages should be encouraged to breed a more vigorous race.

Manu has given recognition to various forms of marriages practiced at his time amongst various groups of people living in India. However he has favoured the most civilised forms of marriages and ~~have~~^{has} discouraged dowry. This was a very positive stand of Manu which must have had helped women in his time considerably, specially if one studies many horrible forms of marriages prevalent in that period. Marriages contracted in such conditions could not have been happy. Therefore, I believe that if we look at the problem in historical perspective we should thank Manu for clearly expressing his preference towards a just form of marriage.

³Disolution of marriage was allowed only in restricted circumstances and was not only the privilege of men. Though inequality was practiced in the rights of disolution women did have some rights. Most important contribution of Manu is recording of existing practices in the forms of law

which by itself must have helped women a great deal in his time and later.

Dissolution of marriage should be studied along with Strīdhana to get the right perspective on rights of women. Protection to Strīdhana is more than what many other societies have given to women. Even today women in most countries do not enjoy the rights over property to the extent it was enjoyed by women in Manus time. This is not to say that no improvement is required in right of women ^{the mother of the} over property but that we have to move forward as Manu did in his time.

Manu has been criticised for allowing Niyoga. However even ^{cursor} cursory study shows that he was not in favour of Niyoga and merely allowed the system to continue under severely restricted condition.

Women have been considered by Manu as a daughter, as a wife and as a mother. In each of these states expectation from her and from others have been properly codified giving no choice for arbitrary behaviour. When we study the codes of behaviour I find that they are full of humane feelings. ^{So} Thus the contradictions in a few slokas become glaring. However, it is inconceivable that the society of Manu's time was oppressive to women even though it may have been restrictive.

Kingship

King and kingship plays role in development of a society. However development of the concepts of king and kingship are mysteries - lost in the past history of mankind.. In discussing the origin of these concepts I find that need for authority to maintain social order were felt very early in human history.

The authority got vested in God, priest and king. King was the expression of power and power of the God and of the priest was asserted through him.

However, fountain source of kings power was the people. In earlier times the king used to be elected by the people and coronated by the priest. The caste of the king was not relevant as long as he was coronated.

I have tried to show that though the king received his powers from the people and was repository of all powers he was subjected to controls. These controls operated through

- (a) Supremacy of Dharma
- (b) Code of Conduct specified for the king
- (c) Countervailing powers of aristocracy
- who became officers of the Government or of the State.

Supreme of Dharma was all pervading and applicable to all. Thus as king was controlled by Dharma aristocracy was also controlled by it. Thus Dharma was supreme and ultimate reference point for righteous behaviour. Thus officers of the government had to perform their duties and behave with people according to the code of behaviour laid by Dharma.

The duties of king was maintenance of discipline, promoting culture and values. Thus he was not only a protector of people from foreign invasion but also of moral values. To be able to do this the king had to lead a busy and spartan life devoid of luxury and pleasure. He had to be virtuous and respecter of the law. Thus the king was expected to lead the people through his model behaviour and not only to rule them by exercise of authority.

However neither law nor authority can alone maintain order in a society. In the past law and authority could effectively function because most people respected moral codes laid by Manu. In present times respect for moral code is sadly lacking and thus maintenance of order in the society has become very difficult indeed. The rulers of the country (minister, officers etc.) lead a life of luxury and do not display any model behaviour. Thus they can hardly inspire the people whom they have to govern.

Social philosophy of Manu -

Importance of study of Manu to understand our society can not be denied. Modern society has grown out of the past and future will also be influenced by it.

In studying the social philosophy of Manu I find that a major concern of the society had been defining roles and codes of conduct of Aryans and non-Aryans. Contract between the two groups were restricted and well-defined. Such definition of rules and codes of conduct were necessary to maintain peace and order in society.

Thus Dharma for each group was separate and they were separate within a group for male and female as in different stages of life. Thus Dharma is a multi-directional concept and thus uneven and unequal. However, Dharma was upheld not by force but by a moral code. Thus Manu was a moulder of social values who was able to develop moral of the people of ancient India by giving due consideration to the entirety of the society as well as its parts. In other words though clear codification of behaviour Manu was able to bring lasting peace in the society.

Varnāśramadharma specified by Manu remained pillars of Hindu society over a long period and even now influences our behaviour. The other important aspect of his social philosophy was Strīdharmā^{arma} which enabled maintenance of racial purity. However as stated earlier • Dharma is an unequal concept and Strīdharmā^{arma} suffers from it. Evil effects of this inequality is visible in modern society where inequality has lost its function due to basic changes in value. It is time that Strīdharmā^{arma} is critically examined to develop new codes suitable for modern times and in terms of equality with men.

Manusmṛti as a Lawbook -

Manusmṛti is one of the most important of the smṛtis. This becomes apparent when we^f consider the volumes of criticism that has been written on Manusmṛti. The law is based on "Śruti-Smṛti-Purāṇⁿokta". Thus the source of law or Dharma is Veda and Smṛtis. Law in ancient India was ~~u~~ integrally linked to religion. The concept of law, Dharma and religion in India was overlapping concepts. We thus find Manusmṛti prescribing acāras and laws of marriage and inheritance in the same breadth. But if we consider law and dharma having same meaning and similarly adharma and anarchy having same meaning we will be able to appreciate that Dharma as prescribed by Manu ~~y~~ as a legal code. Because of close

linkages with religion law was personal law which was applicable to all for controlling evil in human nature.

The laws of Manu recognised customs of various people and changed from one age to another and therefore Dharma prescribed for different castes vary. It thus appears contradictory to have for instance different punishments for different castes for the same crime while in fact it did follow a basic logic.

Dharma was the supreme law for all. It even controlled kings whose authority could be challenged on the basis of Manusmṛti. Manusmṛti clearly specifies duties of a king - violation of which could be challenged by the people on the strength of the Śruti. Thus Dharma as specified by Manu can be called an ancient constitution of India.

Statement Under O.770

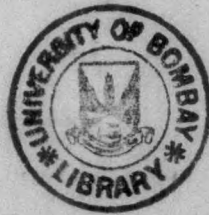
I hereby solemnly declare that the present thesis - Manusmriti - A Critical Study, has not been submitted to Bombay University or to any University in India for the award of any degree so far.

18.3.80

Aparna Das Gupta
(Smt. Aparna Dasgupta)

C O N T E N T S

	Page
Preface	i
Abbreviations	iv
1. Chapter I - Introduction	1
2. Chapter II - a) Part I Dharma in Manu's perspective of Social- Organisation	9
b) Part II Purusārthas and Varnāśramavyāsthā	36
3. Chapter III- a) Part I - Manu's views on women	64
b) Part II- Manu's views on marriage	89
c) Part III-Mother, Wife & daughter	131
4. Chapter IV - Kingship in Manusmriti	155
5. Chapter V - Social philosophy of Manu	185
6. Chapter VI - Manusmriti as a law book	204
7. Chapter VII- Estimate of the Manusmriti	218
8. Statement under 0.771	230
9. Bibliography	242
10. Statement under 0.770	248



CHAPTER I

INTRODUCTION

Ancient Indian literature is very vast and complex in its nature. It is the source of inspiration to scholars, historians, philosophers and social thinkers even to this date. The smriti literature, in particular is equally vast and contents and views of various law-givers are disputable. Manusmriti is one of them on which there are attacks and criticism from all the corners. As such there have been many

attempts to study the Manusmriti from various angles for the last one century. Many orientalist like Dr. P.V. Kane, Prof. Aiyangar, Shri Prabhu, Dr. S.A. Dange's student Miss M. Daghigh and others,¹ have dealt with certain topics like history of Dharma-sāstra, social and political aspects, customs and beliefs etc. But so far no direct attempt has been made to examine the work from pure social point of view, particularly with reference to women and their status, Manu as a social engineer, philosopher and organiser and the estimate thereon in comparison with so many social changes which took place from time to time.

As a woman, I was often told how Manu was harsh and cruel to women, how he was partial to husbands etc. I was curious to know the views of Manu and that has prompted me to study the Manusmriti from this point of view. Accordingly, I have undertaken the present work "Manusmriti - a critical study".

It is a well known fact that the Manusmriti is described as the champion of Brāhmins, a great advocate of caste system, anti-woman and anti-democratic in spirit. That is why there were attempts to burn the copies of this work publicly. Such factors also added an inspiration to read the

¹ Dr. P.V. Kane - History of Dharma-sāstra, Prof. R.Aiyangar's Aspects of Social and Political Systems of Manusmriti, Shri P.H. Prabhu's Hindu Social Organisation, Miss M.Daghigh's thesis on Beliefs and Customs from Manusmriti, R.M. Das' Women in Manu etc.

original text and study it thoroughly to find out how far there is any truth in such beliefs and wrong notions.

However, at the very outset I must say that I have attempted to study the Manusmriti afresh, without bias in my mind, especially with reference to social implications and social philosophy, in the light of views of modern thinkers and social philosophers whom I have quoted at relevant places in this thesis. This is the prime aim of this work.

As an authentic text for study, I have made use of the Manusmriti, published by Nirṇaya Sāgar with Kullūka's commentary thereon, Medhātithi's commentary, few chapters of Manusmriti with different commentaries in Sanskrit recently published by Bhāratīya Vidyābhavan. In a way they are a part of original sources. Other standard books and articles used by me in the course of thesis are as mentioned in the Bibliography. It may be mentioned here that proper care has been taken by me to refer to and study all the relevant material on social aspects such as marriage and morals, women and their liberation movements, political and social philosophy, so as to enable me to form due estimate of Manu.

There are 12 chapters in the Manusmriti which deal with topics like creation of the world, dharmalakṣaṇas, āśramadharmas, duties of the king, duties of women, purpose of marriage, laws of inheritance, forms of punishment, duties

of Brahmins and other various sins and methods of expiations and philosophical topics like nature of individual soul and Atman. These contents will indicate how Manu has covered all ^{human} aspects and how he dealt with them socially, Manu's vision on society was par-excellence and it is said, "Whatever is said by Manu is indeed medicine"². Manu was considered as an authority on Dharma and as such there has been a powerful influence of his views on society even in this century. However, it appears that Manu's letters are quoted and his spirit behind his social philosophy is always fabricated and many a time lost. The result is that Manu is condemned even when he may be right in certain social matters. For example, his views of Āsrama system have its value in this atomic age, duties laid down for various sections of the society cannot be devalued in the interest of society. This problem has been discussed thoroughly in the chapter on Manu's concept of Dharma.

Before we take the next topic in chapter 2, it is worthwhile to know something about Manu. Manu has been mentioned as the 'father of human race' in the Rig-veda³, he is considered as the first performer of sacrifice⁴, he was also a king⁵, Manu wrote in brief ^{the} dharmaśāstra on the

2 "यदे किंच मनुर्वदत्तदुःखेष्वपि ॥"
(Taittiriya Samhitā - 2.2.10.2)

3 Rgveda 1 - 80 - 16, 114.2 etc.

4 -do- 10 - 63 etc.

5 -do- 8 - 52.

basis of one lac verses composed by Prajāpati⁶; he was a versatile man of his age and he knew itihāsa, purāṇas and other Śrutikāras like Atri, Gautama, etc. (see Ms., 3 - 232 and 3 - 16). Sāṅkarācārya also quoted Manu (see S bhāṣys - II - 1 - 1) who spoke of Ātmayājī - (Ms. 12 - 91). This shows that Sāṅkarācārya gave more and more importance to the work of Manu than the works of other writers. It is also believed that there are 14 Manus like Svayambhuva, Svārocisa, Uttama, Tāmasa, Raivata, Cākṣusa, Vaivasvata, Sāvarṇi, Dakṣasāvarṇi, Brahmasāvarṇi, Dharmasāvarṇi, Rudrasāvarṇi, Raucya and Bhautya; they are the 14 successive progenitors of sovereigns of the earth mentioned in the Manusmṛiti⁷. we also get the word 'manvantara' which means the period or age of Manu comprising of 4,320000 and such ages of Manu are described in Purāṇas, it is one of the 5 lakṣaṇas of Purāṇa⁸. This brief account of Manu brings to our notice the importance of Manu which was the symbol of Dharma. Therefore it is reasonable to understand that his views are highly valued. Though Manu is a proper name at the initial stage, in course of time the name appeared to be a general name. This view will be confirmed when we take into account 14 Manus and their different ages. Manu as a law giver enjoyed a high status in the past. His views on various social factors are worth noting and they

6 see commentary of Kullūka on Mś - 1 - 58

7 1 - 63

8 Amarasimha

are to be viewed judiciously. In this connection, it may be remarked that there are many controversial problems like caste-system based on birth, strict rules of marriages, a low status given to sudras, but these problems cannot be isolated from the social structure and pattern of the age of Manu. It will be therefore futile to attempt to study and condemn them on the foundation of modern new notion of social philosophy, democracy and equality of the 20th century.

Though religion was the backbone of society, it was the soul of society, philosophy or search for Atman was the highest goal before every individual. No one was barred from exploring all possibilities in this direction. There were restrictions in religious and social matters. This background is to be borne in mind before any judgement is passed against Manu. This does not mean that all views of Manu are considered ideal and they should be followed in letters. Whatever has become outdated, will die soon and as such it will not be followed. The following chapters will reveal certain data which enable us to estimate Manu as a social organiser and philosopher combined in one. The chapters are arranged as under:-

- (1) Introduction as given above, wherein object of the thesis is clearly mentioned.

- (2) Dharma in Manu's perspective on social organisation -
Dharma as understood by Manu is thoroughly discussed along with the concepts of Dharma visualised by other social thinkers.
- (3) ~~(2)~~ Manu's views on women and marriage are discussed in detail and estimated.
- (4) Kinship in Manusmriti = Manu's views on polity in general are discussed and valued from various angles. Rājadharmā according to Manu is aiming at welfare of the state and even today it is the same aim of all types of governments. Some basic ideas of Manu like kingship are unsound but the spirit behind the concept is the same.
- (5) Social Philosophy of Manu - Manu as a social organiser and a social philosopher is dealt with in this chapter. His philosophy was based on the ideas of his own age but the philosophy was aiming at bringing about^a sane social order.
- (6) Manusmriti as a Law book is studied and it is compared with the constitution which deals with various problems of Government and gives guarantee to citizens for their peaceful life. It appears that Manu's work did serve this purpose in the past in guiding the kings and people alike in the matter

of religion and disputes, property rights and kings and foreign affairs etc.

- (7) Manusmriti - is valued in this chapter in its proper perspective in the light of foregoing chapters.

CHAPTER II

PART I

DHARMA IN MANU'S PERSPECTIVE OF
SOCIAL ORGANISATION

"Asatomā sadgamaya,
Tamasomā jyotirgamaya,
Mṛityurmāmṛitaṁ gamaya."¹

From the unreal lead me to the real, from darkness
lead me to light, from death lead me to immortality.

¹ Brhadāranyakopaniṣad. 1/2/28.

From the early Vedic age this is the urge which has moulded Hinduism into a shape perceived deeply in one's heart. A person becomes a full member of his nation not just by living within its boundaries but by imbibing its spirit and by way of its practice in one's life.

This spirituality as mentioned in Brhadāranyakopaniṣad is the very aim of every true Hindu mind. Describing or defining Dharma is a very hard task as the "Dharma" as a concept, encompasses a person's social, moral, ethical and spiritual life combined in one to give identity to his whole being. Dr. Radhakrishnan says — "The effort of religion is to enable a man to realise the divine in him, not merely as a formula or a proposition, but as a central fact of his being by growing into oneness with it."²

Manu believes that Dharma is virtue which is eternal³ and is essential for every society. Dharma is necessary for the growth of the nation because it provides a foundation to the members of the nation for fulfillment of all the goals of human life.

The word 'Dharma' has been derived from Vāh - to support. All subjects are bound by 'Dharma'. It is certain that by which society is maintained is Dharma.

" धारणाद्धर्ममिच्छातु धर्मो धारयते प्रजाः ।
यः स्याद्धारणसंयुक्तः स धर्म इति निश्चयः ॥ "⁴

2 The Heart of Hindusthan by Sri S. Radhakrishnan.

3 Manu-Smṛiti Chap. VIII-17.

4 Mahābhārata Śāntiparvan, Karmakāṇḍa

Dharma shows us how to lead a peaceful and harmonious life in a society which is moral and spiritual too.

According to the Mīmāṃsaka view -

7. (ना) "योऽप्यनृणोऽर्थो धर्मः" 5 leading to welfare
Dharma is that one which enjoins action by advice as given in the scriptures. In any case it is an injunction or prerana.

धरति लोकान् ध्रियते पुण्यान्मात्रिः इति । 6

That which maintains the world, that which is upheld by men of merit. In the R̥gveda dharma means Poṣaṇa⁷. It also means "Nītinīyama", specially with reference to Varuna who is in charge of Rta or Dharma. According to Vaiśeṣika School dharma is meant for prosperity and spiritual happiness.⁸

Thus 'Dharma' has a very deep-rooted meaning to an Indian mind. The word dharma has no fixed meaning. It is the concept that embraces moral, ethical, social and spiritual aspects of human life. In a sense it is often difficult to distinguish between various values and their influences on religions or secular lives. Any deeprooted value tends to transcend compartmentalisation of various aspects of life mentioned earlier and influences all aspects of life and personality of an individual. Our necessity to classify

5 Jainīni, Sū 1, 1, 2.

6 Bhāratīya Saṃskṛtikōṣa by Mahadeva Joshi under the title "Dharma".

7 R̥gveda 1.187-1.

8 यतोऽभ्युदयानिः श्रेयससिद्धिः सः धर्मः । वै, सू. २, २, ३.

values is to enable us to understand them, if it may not have been important in earlier times when the purpose and the concepts behind the values were affecting human lives on its entirety.

Prof. Ghurye describes this value as under ———
 "With civilised society comes acquisition of consciousness and habit of reflection i.e. are much better described as sense of values and enthronement of reason. By sense of values is meant the quality which has those who possess it to sacrifice the obvious and immediate good to the more subtle and remote. It is through this quality that people deliberately sacrifice comfort and seek beauty for its 'own sake'. They want an education which will teach them how to live full life rather than how to earn a living"⁹.

Dharma shows the way to lead a peaceful and harmonious life in a society putting human behaviour on high moral and spiritual value. To err is humane. Society is not composed of only perfect people but is a mixture of people of various levels of perfection.

Dharma is the way through which society is bound to the land and establishes order. As Dr. Radhakrishnan visualises ——— "Religion is the discipline which teaches and helps us to struggle with evil and sordiness, saves us from greed, lust and hatred, realises moral power and

9 Culture and civilization by Prof. Ghurye.

imparts courage in the enterprise of saving the world. As a discipline of the mind, it contains the key and the essential means of coping with evil which threatens the existence of the civilised world. It implies the submitting of our thinking and conduct to the truths of spirit."¹⁰

According to Dr. P. V. Kane dharma pervades the work and corner of a person's life and embraces the spiritual growth gradually. He says — "A glance at the topics of Dharmasāstra will convince anyone how the conception of dharma was a far reaching one, how it embraced the whole life of man. The writers on Dharmasāstra meant by dharma not a creed or religion but a mode of life or a code of conduct, which regulated a man's work and activities as a member of society and as an individual and was intended to bring about the gradual development of a man and to enable him to reach what was deemed to be the goal of human existence."¹¹

Dharma is a word which encompasses various aspects of life and its values, thoughts, beliefs and actions. In the words of Prof. P.M. Upadhye - "Dharma is duty, religion, piety, righteousness, good conduct, merit, law and discipline"¹².

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10 Religion and Society by Sri S. Radhakrishnan pps. 42.

11 "History of Dharmasāstra" Vol. II Part I by Dr. P.V. Kane.

12 "Ancient Convocation Address" by Prof. P.M. Upadhye
Bhāratiya Vidyābhavan. XXXVIII 1978 - page 77.

Dharma is "a culture, more than a creed"¹³. As Emerson and Mathew Arnold say — "Culture implies a large knowledge content and constitutes essentially an intellectual attitude"¹⁴.

Thus Dharma provides the conscience and is supported by the spirit of the people. It becomes guiding force of spontaneous natural spirit of the community and uplifts it to a better and harmonious life.

To Shri P.H. Prabhu, Dharma seems to be the arbiter, the conscience keeper, the director, the interpreter of the properties that govern the right functioning and management of the relations between the inner man and the outer man and between the individual and the group. Dharma is therefore the holder of the balance in terms of which artha and kama have to be dealt with, weighed, ^{practised} ~~pradised~~ and apportioned."¹⁵

Coming to the Western thoughts on Dharma — "We find that concept of Dharma and religion is not equivalent but they have many common features and may have had the same aim. The same feeling we can find in one of Western Scholar C.C.J. Webb who says — "I do not myself believe that Religion can be defined".¹⁶

13 The heart of Hindusthan by Prof. S. Radhakrishnan pps 14.

14 Culture and Civilization by Prof. Ghurye .

15 Hindu Social Organization by Prof. P.H. Prabhu.

16 Encyclopadia of Religion.

Edward Caird in describing religion says — "A man's religion is the ^{expression} ~~expression~~ of his ultimate attitude to the universe, the summed up meaning and purport of his whole consciousness of things."¹⁷

A person thinks, acts in an environment which is provided by religion. Therefore the religion becomes guiding force of his thought and action.

Religion providing a structure and consciousness of environment influences pattern of behaviour and thereby sets up ethical standards and values. These standards in case of religion is controlled by feelings towards ethics and values. That is why Mathew Arnold says — "Religion is Ethics heightened, enkindled lit up by feeling".¹⁸ All human judgements which influence ~~thought~~ thought and action are based on belief and love of certain values. Without these values, consistency of thought and action are not possible. Harold Haffding in this regard says — "The religion is a belief in the persistency of value in the world".¹⁹

Again according to A.E. Haydon — "The heart of religion, the quest of the ages is the outreach of man, the social animal for the values of the satisfying life."²⁰

17 Encyclopadia of Philosophy.

18 Ibid

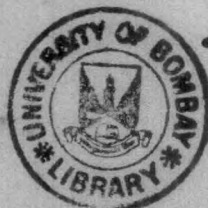
19 Ibid

20 Ibid

Thus one major purpose of religion is to fit a person to his society where he can have a life of satisfying relationships. Perhaps all these concepts are best brought out in the definition provided by Durkheim when he says - "A religion is a unified system of beliefs and ^{practices} ~~practices~~, relative to sacred things, that is to say things set apart and forbidden - beliefs and practices which write into one single moral community called a church, all those who adhere to them."²¹ Whatever may be the definition ancient or modern religion is very important in man's life. Manu too gives Dharma a rightful place in one's life.

All ancient propounders of Dharmasāstra in India tried to establish a code of conduct for the people. This code of conduct was necessary to establish an individual as a contributor to the community and also to satisfy his moral and psychic needs. Dharma exhorts the living spirit among men which helps ^{to} ~~for~~ the upliftment of human existence. In human existence both individual and community are of importance and the purpose of the propounders of Dharmasāstras were to integrate the two in psychical as well as in secular plane. This integration is necessary for human communal existence and also for attaining the human goals. So we may call this sense of humanity as 'Dharma'. It is rightly said by Prof. S. Radhakrishnan ---

21 Encyclopadia of Religion.



"The commonwealth of humanity has no written constitutions . . . it is based on community of ideals, freedom and dignity of the individual, rule of law, economic opportunity for all citizens and love of peace."²²

In the early days of the vedic age the ancient Indian society was an ordered society through its system of hierarchy of human status (varna) and duties of various people within each group. The duty of one group to another was fully defined, alongwith duty of one person to another, Within a family the duties, action and expectations were also defined as were the duties in the four stages of life. In such an ordered society the function of laws of Manu were the binding force and provided guidance to thought and action by its moral and spiritual acceptance. Manu's view was regarded as the wholesome medicine to society. It is in the respect of mode of acceptance that the real difference between Manu's law and modern law lies.

Manu's law or Dharma, by defining the role of individual according to his position in the society provided direction for action. Therefore at the same time it provided a guide to expected behaviour from people and communities. Deviations from expected behaviours had built in checks and balances, therefore these laws ensured even

22 Prefatory remarks of Prof. S. Radhakrishnan in the concept of man edited by Dr. S. Radhakrishnan & P.T. Raju.

distribution of justice within the framework of the social hierarchy.. "We must acknowledge the claim of individual freedom. The ancient lawgivers, while giving people rights in their own ways of life, recognised this claim, and they also instituted a system of astonishing quality. So long as man remains in society, he is subservient to society. No doubt he has the freedom to practice the customs of his particular lineage or locality."²³

To awaken and widen mind and to provide depth to the individual consciousness, Manu, one of the Fathers of Hindu Dharmasāstras laid down laws in the name of dharma to build up individual personality for the benefit of society. Manu says — "Ācāra^{ah} paramo dharmah." i.e. the rule of conduct is transcendent whether it be taught in revealed texts or in the sacred tradition; hence a twice born man who possesses regard for himself, should be always careful to follow it.²⁴ Ācāra is important according to Manu. In fact it is the source of Dharma.

According to Manu Dharma seems to have three distinct sources viz. Śruti, Smṛti and Śistācāra. Manu says — "The whole Veda is the source of the sacred laws, next the tradition and the virtuous^u conduct of those who know the Veda further, and the customs of holy men and finally self-satisfaction."²⁵

²³ The structure of Hindu Society by Sri N.K. Bose.

²⁴ Manu-Smṛti Chap. 1.108.

²⁵ M.S. II.6.

All the rules laid down in the sources mentioned above should be followed by twice born for his own interest. It seems quite reasonable to follow good and healthy tradition for the welfare of society.

Liberty of individual soul is a necessary condition for material and spiritual happiness and it can be achieved by pursuing the path of independence. Manu again says — "Everything that depends on others is 'pain', everything that depends on oneself is pleasure; know that is the short definition of pleasure and pain."²⁶ Self reliance is the key-note of happiness. In today's context, especially in the age of industrialisation, it is found that Man has become a slave of machine, in fact machines should be the slaves of Man.

In addition this sloka has much importance since it lays down a basic approach to life and should not be lost sight of in the study of revealed texts, sacred texts, traditions and the customs of holy-men. Some of which may appear to be contradictory to this basic thought. The growth of religions text in contradiction to Manu and other texts does show that individual freedom was practiced, tolerated and valued in Indian society. The root of such tolerance may be found in this and such slokas. Manu places importances on being true to oneself in honesty

26 M.S. IV.160.

of action. Therefore he says — "When the performance of an act gladdens his heart, let him perform it with diligence, but let him avoid the opposite."²⁷

Manu very bitterly describes a man who is selfish. He says that he who cooks for himself verily eats sin and not food. This shows the broad outlook of Manu who advocates selfless attitude, which is the very basis of democratic spirit in which individual good is sanctified for society.

Manu with realistic outlook adds self-satisfaction as an important fulfilment of 'dharma'. While prescribing laws he gives more importance to moral qualities of the soul, he realises the necessity to satisfy the inner man (antarpurusa) or consciousness, which is the ultimate revelation of dharma. With the above values he shows the way by which a man can uplift his moral values which will ultimately help him to reach and fulfill the ends of human existence i.e. puruṣārthas.

Puruṣārtha has its fourfold aspects i.e.

- (1) dharma (right conduct)
- (2) artha (economic interests)
- (3) kāma (satisfaction of sexual, emotional and artistic life i.e. material life)
- (4) mokṣa (liberation).

As Prof. Archie J. Bahm says — "Hindus have adapted their philosophy of values in life (kāma, desire; artha, possessions; dharma, duty; and mokṣa, liberation), the greatest of these is liberation from time, from the seemingly endless rounds of reincarnation pervaded with activity, and anxiety."²⁸

Manu as a realistic social organiser, thinks that with perfect co-ordination of dharma, artha and kāma, a man in this worldly life can attain to the main end of life i.e. mokṣa. There is no need of only austerity to gain mokṣa as is understood by some thinkers. This is where lies the importance of Manu's view.

✓ Individuality is a biological fact and can hardly be disputed because as said by Manu,

"Single is each being born, single it dies; single it enjoys (the reward of its virtue, single (it suffers the punishment of its) sin."²⁹

✓ "We can ... catch glimpses of a world in which the bonds which bind the individual, are no longer laws, but social habits - the result of the need felt by each one of us to seek the support, the co-operation, the sympathy of his neighbours"³⁰.

28 Comparative philosophy by Archie J. Bahm pps 55.

29 M.S. IV 240.

30 The conquest of bread by Peter Kropotkin pps 67.

That is why we find that Manu gives much importance to individual freedom and growth which are the basic needs of man. However to live and grow as a member of a society one has to relate himself with the society. Dharma provides the guide to this adjustment of the individual with the society and it is designed to provide for both social and individual goals. These two factors except in extreme situations are not in contradiction to each other as can be perceived in the words of Manu — "Contentment, forgiveness, self-control, abstention from unrightously appropriating anything, (obedience to the rules of) purification, coercion of the organs, wisdom, knowledge (of the supreme Soul), truthfulness and abstention from anger, (from) the tenfold law.³¹ These form the very characteristic of Dharma.

To our mind few characteristics may seem to be out of place such as those on purification. These may have had a social purpose at that time. But all the rest are social and ethical codes which are relevant for individual as well as for social development.

Manu laid his laws in a liberal manner so that people of many and diverse views could accept them. It is a pity to see that extreme conservative interpretation of the laws of Manu are pervading in the society to-day.

31 M.S. VI.92.

These interpretations trend to emphasise the ritual aspects in preference to moral and ethical codes in their true spirit. These interpretations must have arisen in later ages through the influence of the Hindu Society of Puranic age. Some of these deviations which pervade the fabric of our society have no relevance and have to be eradicated.

But it is necessary to look afresh at the social and ethical code of Manu. While puranic interpretations steered peoples' mind away from morality, modern economism is equally guilty of it. So much so any discussion on the topic of moral and ethical behaviour seems to be out of place when everything is valued from monetary point of view. Great people of our own times who emphasized these aspects such as Tagore, Gandhi, Ramkrishna Paramhansa are regarded as outmoded and hence unnecessary. But corruption in thought and action has reached a stage where it cannot be left alone any more. We should look back to Manu for these universal timeless values which are relevant even today, for example - selfless attitude, respect for the law and order, tolerance etc. are not and cannot become outdated..

✓ To Manu desire is a natural instinct. "Not a single act here appears ever to be done by a man free from desire,

for, whatever man does, it is the result of the impulse of desire."³².

But "desire is not extinguished by the enjoyment of desired objects, it only grows stronger like a fire fed with clarified ^{butter} ~~butlet~~"³³ So a wise man should strive to restrain his organs which run wild among sensual objects, like a charioteer restraining his horse.³⁴

The same thought is seen in the Mahābhārata. He who leaves all desires, acts without attachment, without feeling and without pride, attains perpetual peace"³⁵. So Manu says that Contentment is the main theme of happiness, its opposite is the root of misery³⁶. We find the same thought again in Mahābhārata — "Contentment is the highest heaven and the greatest bliss. There is nothing superior to contentment. Contentment leads all."³⁷ So that Manu's advices 'know that the internal organ (manas) is the eleventh which by its quality belongs to both (sets i.e. organs ^{of} ~~and~~ sense and organs of action); when that has been subdued, both those sets of five have been conquered."³⁸ If one man obtain all those (sensual enjoyments) and another should ^{re}naunce them all, the renunciation of all pleasure is far better than the

32 M.S. II.4
 33 M.S. II.94
 34 M.S. II.88
 35 Mahābhārata II.71
 36 M.S. IV.12
 37 Mahābhārata Chap. 21.2
 38 M.S. II.92

attainment of them."³⁹ "If he keeps all the (ten) organs as well as the mind in subjection, he may gain all his aims, without reducing his body by (the practice) of Yoga."⁴⁰

These are his worthy revelations. So the inner fulfilment and its proper balance is the main objective of Manu.

This is the universal law and it may have universal appeal if people think over it. As a social philosopher thus Manu accepts natural instinct which a man possess since he comes in this world but, Dharma, manmade laws, enkindles the power of refinement in thinking and helps man to live in a society for the benefit of himself as well as for community. This thought which we find in Manu as well as in Mahābhārata should be understood by individuals in any society. It can be the part of education for the benefit of society.

But modern civilisation is based on materialism and competition, both of which have no end and can never bring real fulfilment to anyone. Unless contentment is achieved, people cannot be contented in spite of material gains.

It is true that material gains are necessary for human life but through material gains one has to go beyond materialism for real happiness.

If we follow Manu's view we will be able to achieve contentment. We find resemblance of Manu's thought in

³⁹ M.S. II 95.

⁴⁰ M.S. II 100.

Aristotle in the first sentence on politics — "There must be an aim or an end in every human mind, if this challenge is lacking, life becomes like a vacuum where there is no ultimate goal and hence people behave as they like without concern for others which may be against communal values and thus very harmful to social growth. Manu believes in the equal importance of dharma, artha and kama for the fulfilment⁴¹ prime end of human existence i.e. moksa⁴¹, but he adds that if artha or kama is in conflict with dharma one should give up artha or kama as the case may be.⁴² Materialism has its value in our life but as Manu says it should not be the goal of life. It should be an instrument rather than the end in itself.

We in India today are giving importance to materialistic values. While materialism has its place, it has to strike a balance with dharma in a broader sense as propounded by Manu. We should give due importance to dharma and whenever necessary over artha and kama. But it is regrettable that we are doing just the opposite and it is very harmful for the same growth of the society and this breaks the balance of social structure, as well as the administrative system.

We have a very small span of existence, therefore, if we value the experience of the wise and elderly men

41 MS. II 224.

42 MS. IV 176.

we will attain maturity sooner. It will help us to reach the ultimate goal i.e. spiritual enlight^{en}ment easily. But Manu reminds us that "one does not become an elder by reason of one's grey hair, he who is well-read, though young, him the gods deem as elder."⁴³ This theory which Manu expounded is very true and applicable even to-day. Maturity of thought does not depend on age alone. Worthy and intelligent persons irrespective of their age should be given chance in every field of life because age does not necessarily mean 'wisdom'. Hence young-worthy people should be given more chances in modern social arrangement and then rapid change and growth can be easily foreseen. But if aged unworthy persons hold all senior responsible positions, society will remain static in growth and it will be an wornout society.

Manu also says — "Learn that sacred law which is followed by the learned and asserted to their hearts by the virtuous who are ever exempt from hatred and inordinate affection."⁴⁴

In assessing learned men Manu has ignored age and has valued views of learned men who are objective in their judgement without being bias^{ed}, either by hatred or by inordinate affection. It is interesting that affection has been qualified by the word inordinate since affection

43 MS. II 156

44 MS. II 1.

to one's ideas and views is natural and even necessary because it gives strength to the process of enquiry.

In Manu's Dharma we find two important aspects i.e. ahimsā (non-injury)⁴⁵ and truthfulness.⁴⁶

Dharma is that which is attained by welfare of the world and non-injury to beings even man and animal alike. Injury can be caused in three ways i.e. (1) through speech (2) through action (3) through the process of mind. This is emphasised in Jainism and Buddhism in the past. So Manu says, — "It is good to teach dharma to the world, but it should be done without hurting people and by using sweet and refined words."⁴⁷ This will speak for catholicity of Manu who does not advocate force for preaching Dharma, or ideals.

Then comes truthfulness on which much stress is laid by Manu. He who wants to move in the path of dharma must be a man of good conduct which is the root of all austerity.

To build up a good conduct one must be very truthful. He should speak the truth, but without giving offence, although one must not compromise truth for being nice.⁴⁸ But he who is dishonest in respect to speech is dishonest in everything.⁴⁹

45 MS. IV 159

46 MS. IV 138

47 MS. II 159

48 MS. IV 138

49 MS. IV 256

Respect towards elders is one part of conduct viz. dharma. Manu says, — "We who habitually salute and constantly pay reverence to the aged obtain an increase of four things viz. length of life, knowledge, fame and strength.⁵⁰

Knowledge is accumulated and generalised experience. Respect to elders is respect to earlier experiences. It is only right that a new experience should be in relation to an earlier experience. If we have no respect for the earlier experience, our own experience will be of little value, because there will be no reference point for our own experiences. Reverence towards elders is an expression of acceptance of the value of their experiences.

In mass education programme we may follow the path of dharma as prescribed by Manu, instead of giving only book knowledge and knowledge of crafts, we may build up the values of the uneducated mass through the basic principle of leading them towards a moral life. This may uplift the moral and behavioural approach of a man towards his community.

Manu's view towards dharma reveals to us that in the scale of values mere performance of sacrifice and purificatory and other religious ceremonies ranked very low

50 MS. II. 121.

while highest value was attached to the moral quality of the soul. As said earlier, Manu believes in *acāra* as Dharma.

This idea appears to have been lost in India to-day due to various causes. It is now time to try to reverse the outlook of the peoples and concentrate on the ideals of Manu which are worthy of our consideration to build moral values of the individuals and our society, suitable to our land and age.

Through laws Manu helps an individual to flourish into a perfect personality for the upliftment of the society. He does not accept the importance of individual welfare for his own sake but for the growth of the society, growth of nation and thus of mankind.

Anybody who performs his duties in righteous manner is bound to get contentment not only in this world but is exempted from the wheel of rebirth - This is the idea of Hindu philosophy which will remain - true as long as mankind is alive. If one has desire to do something he should proceed in a restricted manner, then only he would get satisfaction - through honest endeavour in honest way. This is the revelation of learned mind. That is why Hindu philosophy believes in material as well as spiritual well being. The fulfilment of material comfort gives pleasure

to the outer part of soul but the spiritual view added with material contentment gives satisfaction to soul. This revelation is difficult, but Manu, the ancient law giver, a social organiser and philosopher in one, tried to administer this view of life through "dharma".

This part of Hindu spiritual thought is getting much appreciation in the West. We can see many Western young people of the materially rich culture trying to find solace by coming to India and trying to lead simple but spiritual life though on a small scale.

But we Indians are trying to forget our ancient heritage and running after changes, many of which are of doubtful value. The ancient dharma has its roots so deep in Indian consciousness that it would not affect the basic spirit of dharma very much.

In modern environment we have to cherish our dharma and heritage in true sense of its term, that Manu and ancient sages have propounded. Then only we will have progress in full spirit. In a short time India would be one of the world's most civilised country whose ideals are based on most desirable human values.

Manu is also the advocate of Varnāśrama Dharma - duties of varnas and duties in the stages of life. The chapter II speaks of duties of religious studentship -

the very first stage of life, (IIIrd and VIth chapter)
 describe householder's life which is the 2nd stage and
 the VIth chapter mentions the duties of forest hermits
 which are the last two stages of life. In the very first
 chapter duties of four Varnas are described by Manu without
 going into the details of the institution of four āśramas
 as described in Manu's work. We may refer to its silent
 features as mentioned below.

Manu as a social philosopher prescribed the code of
 conduct and activity which the persons were to follow in
 each āśrama in due consideration of human psychological
 and physical needs.

- 1) Importance is given to studentship -
 Brahmacharyaśrama - which is the spring of later āśramas.
- 2) Householder's life is very important and on the
 Grhasthāśrama all the āśramas rest.⁵¹ There are many duties
 imposed on a householder and his wife to maintain family,
 thereby sustaining the society.
- 3) One should retire to the forest after seeing
 the decaying condition of his body and the face of his
 son's son.
- 4) Lastly he should be an ascetic in true sense of
 the term.⁵² It appears from these features that this

⁵¹ MS. III 77

⁵² For duties see MS. IV.

āśrama system was enjoined for people to live an ideal life. for about hundred years and also to achieve four puruṣārthas or human goals. The Brahmacharyaśrama is the first style of first twenty-five years which a student can learn and acquire various ³loves useful for his life. He was made physically, morally ^xand mentally fit to be a responsible member of the society. Even to-day the concept of education is to prepare a student for his future life. So this āśrama is not outdated.

Next stage is that of Grhasthāśrama in which a person is allowed to enjoy full life with all pleasures in accordance with law. Various duties were imposed on him.⁵³ This stage was in a way soul of the society.⁵⁴ Family is considered today as the nursery ground of democracy and Manu echoes the same spirit when he considers the householders life as superior to all āśramas. The last two āśramas viz. Vānaprastha and asceticism were recommended by Manu as the third and the last stage of life. As said earlier forest life or retired life as it can now be named, is equally necessary when a man lives on active life upto the age of fifty, and at the age of fifty, his physical and mental capacity wearing slowly and slowly and he requires rest. That is why today a retirement age is fixed for the working class in different fields. The idea is that one cannot work efficiently throughout the life due to the process-

⁵³ MS Chap. III & IV.

⁵⁴ MS Chap. III. 77 & 78.

of decaying condition of the body. This truth has been realised in the past and retirement was demanded on religious background. This Āsrama has also not lost its importance, on the contrary, in modern times, a man becomes too much tired in mechanical world. He has to face many tensions and to be away from all such worries and tension retirement becomes obligatory for further peaceful life.

It is not necessary that one should go to forest in retirement age but one can become detached from worldly life in retirement period and do social service according to his capacity. This is the spirit behind the last two stages of life.

Coming to duties of four Varnas or classes or castes as laid down by Manu⁵⁵, it is found that he was partial to the first three classes viz. Brahmins, Ksatriyas and Vaisyas but, very hard to down-trodden class viz. Sūdras. However if we examine the duties of a Brahmin as laid down by Manu⁵⁶, it is difficult to find even one Brahmin of that type today. Manu's age was different and as seen ^{sub} his views on castes and duties, these have become outdated and worthless in this democratic age. His views might have been useful to the then existing society

55 MS. 1: 88-91

56 MS. 1. 88.

as it was the order of the day. It is needless to discuss such views. but a question is whether classless society is possible ! To my humble mind, today casteless society is possible but classless society is impossible. In any type of Government, socialistic or democratic government, intellectual class, warrior (army) class - merchants (banks etc.) and service class are absolutely necessary for the proper function of society. Classes need not be dependent on birth but on quality alone if this improvement is made in Manu's laws intelligent and other classes should work together selflessly for the sake of the society and that is the guiding spirit in Manu's philosophy. We have no alternative but to accept the concept of selfless service to society taught by Manu in the past.

Thus it will be clear that Manu's concept of Dharma, is aiming at the total welfare of the people, material as well as spiritual. Manu's concept of Varnāśrama dharma has its social as well as individual significance and that is why it is quite essential to follow it not in letters but in true spirit for the welfare of society. New meaning and spirit should be attached to the old concept of Dharma to suit our modern needs as seen above.

CHAPTER II

PART II

PURUSĀRTHAS AND VARNĀSRAMADHARMABASTHĀ

In ancient Hindu Society role of an individual in relation to his society was well-defined. Individual was dependent on the society for his personal, material and moral growth while the social growth was dependent on its components i.e. individuals in the society. Religion and philosophy supplied as it were a common consciousness in

the background to help and to enrich the process of social growth. The ancient sage Manu devised his laws on the basis of this common consciousness and achieved a great consensus which remains a living experience even to-day in Hindu ethos. The code of Hindu behaviour developed by him has survived great stretches of time, external influences and has maintained Hindu morality through a thousand years of watershed in Hindu society.

We have previously referred to Puruṣārthas and āśramavyāpasthā. However it is necessary that we discuss these two aspects of Dharma in relation to each other as Puruṣārtha and Varnāśramadharmā are two pillars which have upheld Dharma over the great stretch of time.

Manu's role as a social organiser in building and maintaining a stable society which has remained stable through a long period of Indian history requires proper analysis and application. Hindu philosophy is based on Puruṣārtha which consists of Dharma, Artha, Kāma and Mokṣa. Puruṣārtha has its fourfold aspects i.e.

- 1) Dharma (right conduct)
- 2) Kāma (satisfaction of sexual, emotional and artistic life ~~life~~ i.e. matrimonial life)
- 3) Artha (economic interest)
- 4) Mokṣa (liberation of spirit).

Different law-givers have given varying importance to these elements of puruṣārthas. Manu believes that the balance in distributing importance on each is necessary for the attainment of mokṣa i.e. enlightenment. As Manu says — "The chief good consists in (the acquisition of) spiritual merit and wealth (others place it) in (the gratification of) desire and the acquisition of wealth, others in the acquisition of spiritual merit alone, and others say that the acquisition of wealth alone is the chief good here, but the correct decision is that it consists of the aggregate of those three."¹

Stable and balanced society can be achieved through the harmonious management or the co-ordination of Dharma, Artha and Kāma. Dr. P.H. Prabhu explains, — "These puruṣārthas as the 'psycho-moral' bases of āśrama theory because on one hand, the individual receives a psychological training through āśramas in terms of lessons in the use and arrangement of the puruṣārthas, while on the otherhand, in actual practice, he has to deal with the society in accordance with these lessons."²

Men are but refined social animals. Human endeavour has been to live harmoniously as a social group and at the same time allow for the growth of individual personalities.

1 Manusmṛti II.224.

2 Hindu Social Organisation by Dr. P.H. Prabhu.

Āśramavyābasthā helps man to blossom as an individual as well as to integrate him with his society. In āśramavyābasthā life is divided into four parts and each part is for one āśrama. "The āśrama scheme defines our dharma in and through a life of worldliness, of saṁsāra, before it and beyond its pale and in practice, it seeks to delineate the implications of dharma in terms of Karma."³

The mind of each Hindu was regulated and well-guided throughout his span of life by āśramavyābasthā. "Śrama" literally means "the halting or resting place".⁴ From the Sanskrit derivation it means 'to exert oneself'.

Āśramavyābasthā defines the actions (roles) expected of the members of the society. The different āśramas guided the members of the Hindu society throughout the period of their lives and they integrated men as a social being.

Āśramavyābasthā helped to build, to nurture and to exert people for their prime aim of life. Each āśramavyābasthā (i.e. (1) brahmacharyaśrama (2) grāhasthāśrama (3) vānaprasthāśrama and (4) sanyāsāśrama) serves its special purpose in life.

Brahmacharyaśramavyābasthā -

Brahmacharya was the stage where a man received his educational instructions, which built up his character as an individual and integrated him with the society and its goals. All the details of purificationary rights given by Manu seems

³ Ibid, pps 79.

⁴ Ibid, pps 83.

to have been social requirements at that time. We are not discussing relevance or need of these rituals which may have little significance in modern times. But the main purpose of Brahmacharya was nurturing of the personality of a young man for the rest of his life and thus was of great importance to him. During this āśrama he learned what is dharma in the Hindu way of life and accordingly he shaped up his own character and values for the rest of his life. Brahmacharyāśrama, the first stage of life was considered an important factor of life in Manu's Codes of Law. He laid elaborate rules from the view point of duty, discipline, morality and education. The law book of Manu does not expect copying of whatever is said in it without understanding but expects an intelligent person to scrutinize the laws with critical appreciation and if he has faith on the authority of śruti (revelation) and smṛti (tradition) then only he can proceed with the study.⁵

The belief in Śruti and Smṛti are the basic starting points on which the laws rest. Therefore the values propounded on these texts had to be expected before any discussion would be meaningful. Manu allowed and in fact invited critical analysis of the laws before their acceptance. This shows the awareness of contribution that individuals can make in reformation of the society. Unless

5 Manusmṛti II.8.

basic principles are accepted, there can be no fruitful communication. For instance today capitalism or socialism has acquired the status of faith in arguments over them because the basic tenets are so different from each other. Subscription to faith in Smṛti and Śruti was considered as a basic requirement for a discussion on the laws as faith provided the starting point for discussions.

In the modern context we can think of application of Manu's laws in relation to the need and culture of our time.

After 30 years of independence we are facing social, economic and political problems for which we need the guidance, of a definite philosophy. So said Sri M.N. Roy—"In the absence of a common code of behaviour and standard of values, there can be no unity of purpose, and therefore no-cooperation. The result is the present atmosphere of tormentive doubts, corroding suspicions, cynical to stab each other in the back and the general instability and fear of our impending catastrophe. In this gravest crisis of its entire history, the civilized world needs a new hope, a new faith, a new ideal in a new philosophy."⁶

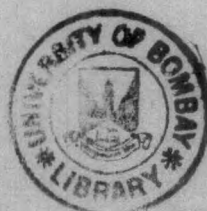
6 New Humanism by Dr. M.N. Roy, pps 62.

We find behavioural learning is of much importance in Brahmacharyāśrama. The child starts behavioural and knowledge-oriented learning after proper initiation. Sacraments were highly praised as these marked the beginning or ending of phases of any action. Whoever did not abide by the rules of sacrament were not considered as liable of being treated as Dvijas and was considered as outcastes. No matrimonial relations were done with him.⁷

In Brahmacharyāśrama syllabus and method of teaching were different from that of now. Each Varna had the responsibility of performing as social volunteers to look after social growth in a disciplined way.

The functioning of the Hindu social system was largely dependent on the knowledge and skill developed by the Dvijas during Brahmacharyāśrama. In this āśrama we notice differences in duties of castes groups i.e. Brāhmaṇa, Kṣatriya and Vaiśyas. These differences may be attributed to the different types of knowledge and different intensity of learning of Vedas, required by the three Varnas. For instance while a Brāhmaṇa should have his upanayana at the age of 8 (after conception), a Kṣatriya at the age of 11 (after conception) and Vaiśya at the age of 12 (after conception) which were the ages when they were to start

⁷ Manusmṛti II.39.



their learning or Brahmacharyāśrama.⁸ However, a Vaiśya was allowed to have his Upanayana as late as 24. Assuming that for 24 years of his life he was learning something he must have been learning his profession. Therefore, it may be assumed that Upanayana was required to enter Brahmacharyāśrama for the sake of learning Vedas and other texts. We find that minimum time devoted to learning Veda is one year for Vaiśyas (assuming Brahmacharyāśrama ends at 25) while for Brāhmanas it was 9 years. Therefore, the Brāhmana's who were mainly responsible for maintaining social and religious laws had to learn the laws with much greater depth as compared to Vaiśyas and Kshatriyas. This difference may be construed as strengthening of caste system and hierarchical differences which it may have been, but the functional implication of the difference is also very clear.

Educational Method

There were no written script^s in Manus time. Therefore the Vedas and other texts were passed on from one generation to the other by memorising them. It was important that accuracy of the original texts ^{was} maintained and care was necessary to assure that they do not become distorted, as it passed on from one generation to the other. It may also be borne in mind that these texts were sacred to the Aryans and were the main binding force of the society,

⁸ Ibid II.36.

therefore much emphasis has been laid on the method of learning these texts. In the context of modern learning memorising have less relevance due to the advent of the script and availability of books. However, in ancient times emphasis on correct method of learning (by memorising) has enabled us to get the texts with very little distortion even though they were written down centuries after they were first composed.

The texts being sacred were not to be challenged but had to be learned by heart. The few things that a student has to learn by heart even today such as poetry or a mathematical table has to be learnt without challenging the contents at the moment of learning. However, when we say that the pupils in ancient times learnt the texts by heart it is by no means true that they learnt the texts without understanding them.⁹

In learning the texts by heart a student started as early as the age of eight.¹⁰ or five¹¹, in special cases and continued for 8 to 12 years. The authority of the teacher was total¹². We would like to point out that usually the pupil stayed with the teacher in his house and thereby the teacher acquired the place of the father¹³. In fact teacher has been given a higher place than the father¹⁴.

9 Ibid II. 224

10 Ibid II.36

11 Ibid II.37

12 Ibid II.71 and 72

13 Ibid II.46

14 Ibid II.226

The prescription of the authority of the teacher would be natural if we consider that often the pupil went to the teacher's residence to study at a very early age. This authority however was required particularly for learning the texts and maintenance of their purity.

The time of study was from sunrise to the sunset¹⁵ for a student. This was necessary because there were no adequate facility of lighting. Even in the villages today where electricity has not reached, the activity of people are restricted between sunrise and sunset. However the learning and reciting of the texts started from the twilight to twilight.¹⁶

The two aspects on which much stress has been laid are (1) recitation of the texts, (2) the control of organs. The relevance of the first is obvious. The purpose of control over all the organs ~~were~~^{was} seen as important for attaining wisdom.¹⁷

However it appears from the sloka no. 101 of second chapter of Manusmriti that the control of organs ~~were~~^{was} necessary for the concentration that ~~were~~^{was} required for the long hours of study.

In ancient days reward and reprimand system was not based on examination marks as today but on attainment of

15 Ibid II.219

16 Ibid II.78

17 Ibid II.99

pūnya or pāpa which were much more powerful inducement for correct behaviour. Regard for pāpa or pūnya led people towards self-discipline and righteousness. Therefore the system was more effective than the present one of external control, since external controls are always shunned and disliked and therefore bypassed as often as possible.

Student teacher relation

Manu attaches highest responsibility of the teacher to educate his pupil so that he develops as a worthy member of the society. He says that the parents only give him the living (physical) existence i.e. birth but a teacher through his teachings gives him birth of self-respect in accordance with dharma and gives him a refined and educated mind. This new birth is also exempted from age and death¹⁸. The teacher with affection like that of a mother and of a father towards a son should try his best to teach all the knowledge to his student without any desire for return and bargaining motive.

On the other hand the student must consider his teacher as father and mother combined together and give due respect.¹⁹ There must be a reciprocal relationship which will help both the teacher and the student^{and} which will help in building up balanced and intelligent individual. Obedience is an important virtue in student-teacher relationship.

¹⁸ Ibid II.148

¹⁹ Ibid II.144

A student should be grateful to his teacher and while leaving the teachers' residence show some respect and gratitude as remuneration to his teacher, it may be money or a field or anything else according to his ability.²⁰

A student may give a field, gold, a cow, a horse, a parasol and shoes, a seat, a grain, vegetable etc. in payment to the debts to his teacher.²¹ The items listed were not linked to either time spent on learning or content of learning but on the ability of the student to pay.

Manu says that when merit and wealth are not attained by teaching, nor at least due obedience in such soil sacred knowledge must not be sown, just as good seed must not be thrown in barren land.²² Even in dire distress a proper teacher should rather die with his knowledge than sow it in barren soil.²³

These slokas indicate that the teacher had the responsibility of carefully selecting his pupil and that he was to select the pupil according to his capacity to learn, ability to pay, Varna or any other such factors extraneous to the choice of a pupil.

Hierarchy of learning relationship

A person possessing faith may learn from a lower caste

20 Ibid II.245

21 Ibid II.246

22 Ibid II.112

23 Ibid II.113

and the highest law from the lowest person.²⁴ In times of distress a student may learn from a person who is not a Brāhmaṇa.²⁵ But for the best learning a student should learn from a ^Āśārya because he is ten times more venerable than a upādhāya,²⁶ ^Āśārya is a Brāhmaṇa who teaches Veda with Kalpa and Rahasyas²⁷, while Upādhāya teaches portions and aṅgas of Veda.²⁸

Manusmṛti dwells at length on the relationship between Brāhmaṇa and student. However not all these relationships are teacher-student relationship. There are a number of relationships between Brāhmaṇa and student which are based on ritualistic activities rather than on learner and teacher relationship.

Teacher-student relationship as has been discussed earlier, had been based on acceptance of the authority of the teacher and gratitude towards him. The essence of relationship had always been that of a father and son relationship.

A discussion on modern and ancient education system -

In modern education system of democratic participation, teacher is not a source of knowledge and students ought to look upon teachers as vehicles for authorita^{ative} information

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- 24 Ibid II.238
 25 Ibid II.241
 26 Ibid II.145
 27 Ibid II.140
 28 Ibid II.142

and interpretations. But this fine idea of student teacher relations has given way to a mechanical relations of imparting knowledge to a common mass of students. The object of learning itself has shifted away from a conduct of a moral and well-organised life or gaining knowledge but at its best as pursuit of production of goods and services. A large number of people are now going through the education system in the hope of employment. It is natural therefore that a student has no respect, nor faith towards either the teacher or the content of his teaching. Therefore there is no real education and building up of a righteous individual for the benefit of the society. Instead the education system is turning out people who neither have education nor sense of morality.

This unsatisfactory method of modern education can be changed in favour of a modified version of Varnāśramadharma. There are many thoughts coming up in what in the West is referred to as non-formal education and they resemble our system of Varnāśramadharma rather closely.

The new systems of education conceived ranges from education through guilds and peer relationships to programme instruction, to creation of consciousness propounded by Illich. A combination of these ideas may produce a new system of education which will be related to honest conduct of life as well as modern system of production. Unemployment problem

will then be much reduced and people will have freedom to choose their career. The teacher-student relation will improve and naturally 'discipline' will be realised by students as a virtue which is the basic requirement for harmonious living. If discipline has to come to the society it has to come via student community. Respect for teacher is a necessary component of learning process. Learning cannot be had without respect to the subject of learning and the teacher who imparts it. The faulty education system without trying to solve this basic issue is trying to avoid it by various doubtful and untested methods. We have to recognise the problem and view it in the perspective of relatives of this country otherwise it will be harmful to the teacher-student and consequently to learning.

Grhasthāśrama Vyāvasthā

Grhasthāśrama is the most important of all āśramas prescribed by Manu and recognised by him as such. Ascetic aspect of the Vānaprastha and the Sanyāsa was possible because of material base provided by Grhasthāśrama. Thus the importance of this āśrama has been fully recognised. On the other hand Brahmacharyāśrama is preparatory āśrama to the Grhasthāśrama.

According to Dharma leading fully productive life is essential for Mokṣa which is the goal of a devout twice-born man. Such a productive life in which Dharma, Artha and Kāma

which form three other aspects of Puruṣārtha, is only possible in Grhasthāśrama. Thus Manu says that "a twice born man shall marry a wife".²⁹ I will discuss under the chapter on marriage various aspects of marriage but it will suffice to point out at this stage that Manu made it mandatory for a twice-born man to marry and to raise a family.

The fulfilment of puruṣārthas was the goal of a twice-born man. We may discuss here the specific puruṣārthas and how they were to be fulfilled by a house-holder. The Dharma of a householder was to support all the three orders i.e. Brahmacharyāśrama, Vānaprastha and Sanyāsa. "Because men of the three (other) orders are daily supported by the householder with (gifts of) sacred knowledge and food, therefore (the order of) householders is the most excellent order."³⁰

This particular Śloka is very important because according to Medhātithi³¹ "This verse indicate that householders alone are, as a rule to be the teachers of Veda". If this interpretation is accepted then it would appear, that householder, not only provided material support to the society but also had the responsibility of spread of culture through providing education. This may also lead us to surmise that a definite effort had been made to link education with material life and that emphasis on material culture was more than it is generally believed to have been.

29 Ibid III.4

30 Ibid III.78

31 Buhler p.89



One can appreciate that all the learning in Brahmacharyāśrama was directed towards becoming a good house-holder whose two-duties were (1) teaching of Veda (2) feeding others. Thus "He who prepares food for himself (alone) eats nothing but sin"³² Because the main aim of a householder is serving the gods, the guests and of the Bhūtas. All cooking is only for oneself he is eating only sin. Duties to the gods, the guests and the Bhutas is neither nominal nor occasional affairs but are daily duties. A Householder was supposed to eat only what was left over after these daily duties have been performed. If nothing was left over he may or may not cook for himself. Such were the expectation out of a householder.

The householder has to feed daily the gods, the guests, the dependants, the ancestors and himself. "But he who does not feed these five, the gods, guests and those who deserve to be maintained, the fathers and himself lives not though he breathes."³³

Thus we see that importance given by Manu to the order of Grhasthāśrama to the fulfilment of duties towards others is very severe. In fact the whole order is devoted to serving others, when we compare this order with other orders we find that they have much less responsibility towards others.

32 Manusmṛti III.118

33 Ibid III.72

One of the other major part of the dharma of the householder is procreation to maintain the lineage. That is the reason why Manu has dwelt at length covering all aspects of marriage including the qualities of a bride must possess and the faults she must not have.

Some of the faults may not be in her but in the family she comes from. This goes to the show that Manu was quite concerned about genetic factors influencing the quality of offspring. For instance Manu says, "Let him wed a female free from bodily defects".³⁴ He also advises the householder not to marry a female from a family "in which no male children are born"³⁵. Householders duties towards maintenance of lineage has been discussed further in the chapter on marriage. (Chapter III Part II).

The importance of this āsrama had probably come to the fore in Manu's time because of tremendous rise of asceticism in preceeding years under the influence of Buddhism and Jainism. In both of these religions ascetism had acquired great value. However development of ascetism in any big scale is not good for any community. Because ascetism does not provide material base on which culture and civilisation can thrive. Thus Manu did a great service by laying stress on Grhasthāśrama which developed material base and spread culture over the centuries in India.

34 Ibid III.10

35 Ibid III.7

Vānaprasthāśrama

Vānaprastha is the āśrama where a person has to leave his village after his life as householder and live in a forest and restrain his organs from all worldly pleasures. He has to perform the five great sacrifices according to rule with various kinds of pure food fit for ascetics or with herbs, roots and fruits.

This stage is very relevant in personal life of a man and has profound influence on the society. Manu says - 'when a householder sees his skin wrinkled and his hair white and the son of his sons then he may resort to the forest.'³⁶

Though we devide the life in four equal parts taking a man's age as hundred years we find fifty is the age of Vānaprastha. But there is no hard and fast rule as such given. When the person feels that he is old and his responsibilities are over he can retire. It is good for the family and society too.

This idea is applicable even to-day as whenever a person finds his desires fulfilled, responsibilities over, he should slowly retire to this stage of life. He may slowly take his mind away from day to day life and concentrate himself in deep thought.³⁷ In todays context there is no need

³⁶ Ibid VI. 2

³⁷ Ibid VI.31

of this going to the forest. He may stay in his home - atmosphere but withdraw from worldly affairs and day-to-day decision-making. Family responsibilities should be taken over by younger generation so that they may live according to the dictates of their own choice.

Though the person is aloof from worldly affairs his role as a member of the society stays therefore he should be friendly towards all³⁸ and should perform five sacrific

Slowly he should prepare his mind to be aloof from all attachments and pleasures.³⁹ This stage is important both man and woman though Manu says that for a woman it is not compulsory.⁴⁰ But it is preferable when she is prepared to take up Vānaprasthārama. Perhaps this prescription for woman is because she is young compared to her husband and can stay few more years with the worldly attachments.

In western countries old parents become quite aloof of their children and they have arrangements like old home etc. which is state's responsibility. But here the idea of the children to look after her parents as a reciprocal basis is unique if the adjustment is done in a considerate way. Vānaprastha is meant for that. It is even true today if seen in proper perspective. Family life will be much more healthy and worries lessened - thus beneficial towards society.

38 Ibid VI.8

39 Ibid VI.22 to 26

40 Ibid VI.33

In a more competitive society than ours as in the West people are coming to realise importance of preparation for retirement from active life. The retirement brings in a complete vacuum and purposelessness in the people of these countries. The lack of adequate psychological preparation is at the root of the problem by preparing a person for each stage of life. Moreover it may be stated that a man has to retire at the age of sixty or sixty-five and spend his life in a very calm and quiet way. Ancient law-givers like Manu must have thought his view in the interest of human beings.

Sanyāsāśrama

It is the last stage of life where a person has to sacrifice attachment to worldly objects and he should live like an ascetic.⁴¹

• This is the stage where a man should be aloof from all the attachment of worldly things and concentrate himself in studies for the attainment of enlightenment i.e. Mokṣa. Enlightenment means the attainment of a pure consciousness where he finds God in himself. This stage has no social or individual responsibility. Thus he prepares himself for the immortality through death.

✓ Thus these four āśramas set before a person a perfect network for a harmonious life which is at peace with the

41 Ibid VI.33

society makes a person's social existence meaningful and enjoyable.

We have a sharp difference of outlook with the Western ideas on society. The difference encompass the relation between a man and a man and between man and his environment.

Hindu thought gives rise to a social philosophy of existence which guides the social practices, conducts and institutions.

Varnavyavastha

✓ 'The four castes and orders are not intended to be special moulds in which the Indian people are thrown, but forms capable of embracing the whole humanity what has attracted it is not imperialist expansion, but the cultural conquest, the peaceful penetration of the thought and mind of the people which it achieves by its own spirituality.' - This is the thought expressed by Sri S. Radhakrishnan in "The heart of Hindusthan."⁴²

Manu believes that varnas are differentiated according to respective duty and responsibility of a group of man towards the society. So he says - "But in order to protect this universe, He, the most resplendent one, assigned, separate duties and occupations to those who sprang from his mouth, arms, thighs and feet."⁴³

42 The Heart of Hindusthan by Sri S. Radhakrishnan.

43 Manusmrti I. 87

Manu also declares definitely that there are four Varnas and not any fifth varna exists. When he says, 'The Brāhmaṇa, the Kṣatriya, and the Vaiśya Varna are the twice-born ones, but the fourth the Śūdra has one birth only, there is no fifth varna.'⁴⁴ "Though Manu refers to four varnas only, he mentions about fifty-seven jātis, as a result of Varnasankarah".⁴⁵

Caste system as we know today is a fusion of Varna and jāti systems which have gone through a process of degeneration and have lost its original purpose. Original purpose of Varna seems to have been division of labour which by the time of Manu had become hereditary and hierarchical in nature so that fifty-seven Jātis could have come to being (which were varnasankara).

The two systems were completely independent though "by the reaction of principles on fact the two institutions may have become fused together later on".⁴⁶

Therefore as Dr. P.H. Prabhu says that "the water-tight compartments of the Jāti-system therefore are done to later Brāhmanic interpretation of the term Varna".⁴⁷

As 'Vidyā' or knowledge was considered the most important need of mankind and for its prosperity, priesthood

⁴⁴ Ibid X.4

⁴⁵ Hindu Social Organisation by Sri P.M. Prabhu pps 297

⁴⁶ Caste in India by Senart

⁴⁷ Hindu Social Organisation by Dr. P.H. Prabhu pps 298.

attains the highest class.⁴⁸ They were the intelligentsia of the country who had the creative power through knowledge. Dr. M.N. Roy also gives the highest power to the intellectuals to form the council of State.⁴⁹

Then came the Ksatriyas who are army people. They had the responsibility to look after the defence of the country and to maintain internal peace and order. The third rank has been given to the Vaiśyas i.e. businessmen. Śūdras were the enemies so they were very much neglected and they were engaged as labourer and *āśramavyāvasthā* was not meant for them. They were deprived of social advantages. This appears to have been done to suppress them.

So *varṇas* or classes were meant for professions. For each class they had different behavioural and educational system. Each group of class had the responsibility to perform as social volunteers to aid social growth. Each *varṇa* was a social unit by itself while at the same time it was a group within the total system.⁵⁰ Richard Lannoy says that "social hierarchies are universal, in no society, not even those which purport to be, wholly egalitarian are they completely absent."⁵¹ Following the argument we may say that Manu understood the social reality and reorganised it through this *Varnavyāvasthā*.

48 Manusmṛti II. 135 and 155

49 New Hinduism by Sri M.N. Roy pps 62/Humanism

50 The Speaking Tree by Richard Lannoy pps 138

51 Ibid pps 140.

According to natural qualities i.e. Guṇakarma which a man is born he can take up his profession. Dr. P.H. Prabhu says that "Guṇas basically determine the tendencies and aptitude, the potentialities and the limitations and directions of successful social contribution by the individual."⁵² This is described in Gītā very elaborately as Guṇa-karma Vibhāga".⁵³

But the caste system as we know today has many evils which have developed mainly because of the development of hereditary nature of varṇa and loss of its professional nature. So Dr. P.V. Kane says that "No system is perfectly immune from evil effects."⁵⁴

We have to abolish these evils out of Jāti/Varṇa relationships such as untouchability etc. However it is rather difficult to visualise a transformation in economic relations of caste and in indigenous vocational education system in the short run. Even primary education has not properly reached the villages, let alone vocational education. Still the vocational education is dependent on father teaching the son and economy rests on traditional farmer or blacksmith.

The economy is still based largely on a barter system.

52 Hindu Social Organisation by Dr. P.H. Prabhu

53 Gītā IV.13

54 History of Dharmaśāstra Vol.II, Part I.

in its ancient character or in a modified form. It would therefore be proper to try to revitalise the system of Jati/Varna relationships to its original status with a clear war against the hierarchical relationships as in present caste system. This approach will help in revitalising the social as well as economic relationship.

Since society values different activities differently economic inequality and inequality of status follows the occupation. A man is a product of his education and education is usually related to his craft. Therefore inequality has always been a built in characteristic of division of labour. Worth of an individual has always been evaluated in terms of his ability to produce. We hear the resonance of the concept of Dharma in Aristotle. Aristotle puts the same idea little differently, asserting that justice is a condition in which each keeps to his appointed sphere; that we first take account of relations of inequality, treating individuals according to their worth, and then secondarily of relations of equality in the classes to which their worth requires them to be assigned.

In Christian Ethics devotion to duty and obedience to authority has always been upheld. The importance of defining social hierarchical relationship was attempted by

St. Paul. Even though his attempt was not nearly as elaborate and complete as that of Manu, in spirit however, they had much similarity. And it is interesting that in propounding his views he was essentially airing earlier Greek conceptions. We find in Manu the same characteristics where he often accepted the views of ancient sages, St Paul exhorted ^wives to obey their husbands and servants to obey their masters and thus everyone to exert himself to do his duty in the class where the social order had put him, in saying this he was influenced by the conception of the Greek Law.

Manu thought it wise to define social relationship according to professional or economic classes and gave importance to Varnāśrama. Varnāśrama was thus a patternisation largely of occupational basis of the society.

Manu also accepted hierarchal nature of classes. He thought that the excellence of each occupation can be attained by this method. If we follow we will see that the caste differences had their basis in mode and opportunities of education. Both of which have substantially changed in the modern world - thus affecting and changing the very basis of the system. The change in modes of production by means of machine does not necessarily give advantage to holders of traditional skills.

In ancient times caste assumed employment and education in family-crafts. Present system of education opens up opportunities for mobility from craft to craft undermining the basis of the class structure i.e. Varnabyābasthā.

CHAPTER III

PART I

MANU'S VIEWS ON WOMEN

From the historical and cultural data found in various religions^U secular literature in ancient India it is observed that Hindu Society has changed over time in interaction with various forces that have^{have} affected the social fabric of this country. Psyche of Hindu has responded to the external stimuli in a significantly different manner than most other

peoples of the world. The uniqueness of the reaction has given rise to peculiarly Hindu way of dealing with problem, which to a Western educated person in an industrialised society is often an unfathomable mystery. As Dr. Kshiti Mohen Sen says — "Hindu society is a product of many races and many cultures. It is necessary to recognise this fact to appreciate the complexity of the Hindu Society and religion."¹

The Aryans entered the North-Western planes of India, as it were, in different waves. In their semi-nomadic life there was a spirit of freedom and dynamism. However, they did not come to a country with no cultural background. It is said that they encountered a flourishing civilisation at Mohanjodaro and Harappa. Besides they also encountered other tribes like Mundari. Though the initial phase must have been clashes of swords and of cultures but there is no evidence of continued clash in later period. "There is no doubt that the tribal and nomadic Aryans who moved into a country which already had a settled and an advanced civilization borrowed heavily from the latter, though how much and in what areas, still remains highly controversial."²

How much give and take there was between the three distinct cultures i.e. Aryans, Dravidian and Mundari is a

¹ Hinduism by K.M. Sen. pps 17.

² Hindu Elhos and the challenge of change by Sri Subhayu Das Gupta pps 102.

matter of speculation but peace was established by clearly defining role and status in a fairly strict order of hierarchy. From there onwards hierarchical relationship has been used as an important tool for maintenance of peace in all sphere of social life and culture. Status of women in Hindu society like all other aspects has been profoundly influenced by hierarchical orientation of the Hindu Society.

During the age of the vedas we have an ample evidence to show that women enjoyed much freedom and that this age had produced great women scholars. As Prof. N. Desai said, "The Vedic society as we saw gave maximum freedom to women at home and in society, though within the matrix of her basic subordination. After the vedic phase ended, certain tendencies making for the deterioration of women's position emerged and became more and more aggravated."³ They were expected to take equal part with men in religions and sacrificial rites which formed the measure of the status. However in later Brahmanical age we find this freedom and status have eroded. We may examine the historical causes of this change but it has to be remembered that the relationships as defined in the texts may not refer to particular periods but may be accumulation of rules used in different times in the history of the Hindu people. Thus the texts contain much contradiction and they may have been in much greater contradiction to real life.

³ Woman in Modern India by Smt. Neera Desai. pps. 26.

During Vedic times the women were expected to study Vedic texts just as were men. However they were taught at home rather than at gurugrha. Consequently their teaching could not have been as good as that of the men. Thus even from this period we see seeds of inequality in the status of men and women. 'Evidences in the Vedic literature suggest that women of the Vedic India were educated. There was also a categorical injunction prescribing a woman on the completion of her period of studentship of brahmacharya to marry a learned young man.'⁴

In ancient India religious rights and privileges were valued most. The social status of man and woman was determined by the acceptance of him or of her in religious rites and performance. Money had secondary value in determining social status but education was given the priority. To perform sacrificial rites, to be versed in Veda were most necessary. In the Vedic period we find both man and woman got equal opportunities. Prof. A.S. Altekar says - "Dawn to the beginning of the Christian era, Upanayana or the ceremonial initiation into Veda studies was as common in the case of girls as it was in the case of boys."⁵

✓ In Atharvaveda we find that a maiden can succeed

4 Social change in Indian Society by Raghuvir Sinha.

5 The position of Women in Hindu civilization by Prof. A.S. Altekar, pps 4.

to get a suitable partner only if she was trained properly during the period of studentship (Brahmacharyāsrama)⁶.

We know about women scholars such as Maitreyī, Sulabhā, Gārgī and Vacaknavī.⁷ We do not know much about them as no trace of their works are found yet except some scanty references to the dialogues in the Upanisada.

Husband and wife together used to perform many sacrifices which had much importance in daily life and in society too. We see in Śatapatha Brāhmaṇa gods do not take oblations offered by a bachelor.⁸ It is because wives and husbands both were responsible for procreation. Thus wives enjoyed both spiritual as well as religious status, equivalent to their husbands in that age.

The Upanayana or Initiation ceremony of the girls used to take place as regularly as that of the boys at the normal times. This was the case as early as the Indo-
✓ Iranian age.⁹

Till the age of sixteen or seventeen the girl used to follow a discipline more or less similar to that of the boys. But in that age also special precautions for girls were used as they were not to beg food anywhere nor were

6 Atharvaveda XI 5, 18.

7 A's, G, S. III, 4,4.

8 S.Br.V.1.6.10

9 The position of Women in Hindu Society by A.S. Altekar pps 237.

allowed to go to stay with the teacher. They were taught by near relations like uncle, brother or father.¹⁰

At the age of Brāhmanas (C 1500 to 1000 BC) Vedic studies became very elaborate with too many accessories.

An urge of thorough and correct knowledge of vedic studies ~~were~~ were in demand in the society. Girls being married at the age of 16/17 could not devote enough time needed for such elaborate education. So that scholarship came to be discouraged for women.

Sacrifice also became too elaborate and proper performance of those sacrifices became important in the age of Brāhmana. Men were encouraged to perform sacrifices.¹¹ and the presence of women became only formal. At the beginning of christian era we find Manu declaring performance of evening sacrifices by women but without Vedic Mantras.¹² Manu says, — "Upanayana for women may be performed but no vedic mantras should be recited."¹³ At first glance it seems that Manu has restricted girls domain in all these activities. But we have to consider the background of the society which prevailed before and just after christian era which we have presently discussed. Thus Manu may have been simply formalizing accepted social norms which required prolonged studies to acquire mastery.

10 Ibid pps 237

11 S.B. 1, 1.4. 13.

12 Manu-Smṛti III.121 .

13 Ibid II.66.

Slowly women lost their freedom in religious life as they used to enjoy in vedic age, reasons for this change may be found in elaboration of studies.

Aryans or Hindus as they were called later on had to struggle constantly to live in India and to preserve their culture and values. The Manusmṛti had probably attained its present form by the 2nd century A.D.¹⁴ During few centuries before that India was constantly invaded and ruled by different foreign rulers and thus society was very much in unsettled state for a long period of time. As maintenance of fidelity and lineage was the main responsibility of ancient women the age of marriage was slowly lowered down considerably just to protect the women-folk. Otherwise status of women and their protection may have been hampered and society was concerned about it very strongly. Tagore in consideration of above mentioned facts remarked — "For this reason this society (Hindu society) always lives within a fort. For the same reason it is highly conscious of differences and contradiction between 'us and they'."¹⁵

So we see naturally when the marriage age came down Upanayana of women could not be done or if done it was only formal. During the age of the Brahmanas much importance

14 A history of Sanskrit literature by Prof. S.N. Das Gupta. Classical period. Vol. I, page XXV Introduction.

15 1) Swadesh O Samāj - Rabindrarachanabali by Sri Rabindra Nath Tagore pps 9.
2) Manusamhitā Chapt. III, by K.G. Goswami, Introduction.

was laid on perfect vedic studies and perfect utterance of .
vedic mantras during sacrifices, as such women who were
married earlier had no chance of education. So the rule
says that, "if Upanayana was done there is no need of
utterance of Vedic mantras for women."¹⁶

Manu was perhaps very wise in proclaiming this rule,
we find that as in modern society, Hindu marriage are still
performed with Vedic mantras but neither brides nor
bridegrooms understand a bit of it. Now a days studies do
not mean learning of the vedic mantras - therefore even when
educated brides and bridegrooms are married they are
ignorant about the mantras. What is the use of uttering
mantras which are not understood? Is it not better to stop
utterances completely of mantras now for both men and
women? Instead they can utter mantras translated in their
own languages as the thoughts contained in them are
important and valid.

Manu was logical in declaring women not to utter
vedic mantras as they were ignorant about their meaning.
But it was not meant to lower the status of women. Manu in
fact was discouraging ritualistic utterance of mantras by
those who did not understand them.

But many critics of Manu without appreciating the
underlying historical factors that led to these sayings

and the ^{text} concept in which they were said, declares that woman's position had been lowered by Manu. But as the age of marriage was lowered for the reasons previously discussed, women could not get enough education, their religious rights were gradually lowered down and women became economically dependent on men. Thus in the following ages women gradually became completely dependent on men and men took the opportunity of domineering over them. Thus their status in society was slowly lowered down and became disastrous. Prof. Altekar said, "Since the spiritual disenfranchisement of women, men have become accustomed to regard them as their inferiors in all spheres of life."¹⁷

Sūdras did not have the right of Upanayana therefore it became customary to compare Sūdras with women and they were enlisted along with Sūdras in status hierarchy. Sūdras were Anāryas and were prohibited to enjoy many social benefits which the Aryans used to enjoy. Gradually society imposed the status of Sūdras to womenfolk and deprived them of Aryan privileges though they were Aryans. But we do not know what Manu wanted by comparing women with the Sūdras but Society took it in the light described above. And women's condition became pathetic. So Dr. A.S. Altekar says — "The desire was not to humiliate women, but rather to save them from dire consequences."¹⁸

¹⁷ The position of Women in Hindu Civilisation by Prof. A.S. Altekar pps 250.

¹⁸ Ibid pps 244.

This must be the spirit behind the prohibition of ladies in the learning of Vedas etc.

All patriarchal societies were deeply concerned with maintenance of purity of lineage which gave rise to isolation of women. Protection of purity of lineage has led to isolation of women from the male beyond the immediate family. Thus going to Gurugrha to study was not permitted even in the Vedic age. Even in the early times when there was much freedom enjoyed by women they were basically possessed by men.

Total equality of relationship of men and women is a very modern concept. However even without this sort of relationship women were able to flourish in their intellectual pursuit which kept open a way for their self actualisation and fulfilling aims of humane existence.

During the Vedic times Aryans were the victor race and had little to fear from the vanquished races of Drāvidians and Mundās. But India was not left alone. Sakas, the Huns and many other foreign races came and conquered many parts of the country and established their kingdoms. Aryans felt the necessity to 'protect' their women from these conquering races which led to early marriage of women. Thus we find the child marriage had taken its roots in the very early period of Indian Civilization.

Another point for lowering the age of brides was maintaining purity of lineage. In India marriage was considered as hard penance where procreation is ^{of} much more important than the pleasure of sex. The poet Kalidasa has depicted the true nature of marriage in the three poetries such as Kumarsambhavam, Raghuvamśa and Sakuntalā. According to Rabindra Nath Tagore, the goal of these marriages is "Kumarsambhava" i.e. the birth of 'KU-MARĀ' that is birth of a man who will destroy all evil and render the heaven free of trouble.¹⁹

Moreover in Indian way of marriage society plays much more important role than the individual desire of the partners which may appear to the foreigners as baseless. But in Tagore's opinion this is the basis of Hindu marriage which gives desire of the partner no important place in selection as then only society can have its coveted standard."²⁰

In contrast to this approach let us consider what Olive Schreiner has to say writing as early as 1911 about the marriage in modern European Society. She says -
 "Probably three-fourth of the sexual unions in our modern European societies, whether in the illegal or recognized legal forms, are dominated by or largely influenced by the sex purchasing power of the male."²¹

19 Swadesh O Samāj - Rabindrarachanabali by Sri R.N. Tagore pps 13.

20 Ibid

21 Woman and labour by Olive Schreiner. pps 252.

The early marriage made education of women impossible, education in those days really meant learning of Vedas and scriptures without the knowledge of which no religious or sacrificial rites could be performed which led to exclusion of women from performance of religious and sacrificial rites as seen earlier.

Knowledge of Veda was obligatory to 'Dvija' and those who were denied the access to the knowledge of Veda, were the Śūdras. Therefore in the hierarchical status the women were denegated to the status of Śūdras.

But we will be guilty of over simplification if we assume that the women had no significance to the society. In the treatise of Manu we find woman as the mother, the wife and as the daughter, being ascribed different roles and status in society as well as in family (discussed at the end in Part III, Chapter III).

One major contradiction which makes comparison with Śūdra void of real substance is that the women were either a mother, a daughter or a wife or a sister which a Śūdra was not. There was no pollution from touch and relationship must have had been affected by affection, love and respect. In fact Manu recognises this aspect when he says - "Where women are honoured, there the Gods are pleased, but where they are not honoured no sacred rite yields rewards."²²

22 MS.III 56.

This verse makes it obligatory for men to honour the women and it is a recognition of a fact. There is no place where honouring of a Sudra has been necessary. Thus the comparison with Sudra is the result of strictly legalistic and hierarchical approach and devoid of substance even in that age and today it has become meaningless in view of change in society.

The fact that the relationship of men and women was based on finer human feelings rather than on status orientation comes clearly from another sloka, "Hence men who seek their own welfare, should always honour women on holidays and festivals with gifts of ornaments, clothes and dainty food."²³ or "In that family where husband is pleased with his wife and the wife with her husband happiness will assuredly be lasting."²⁴ If such relationship was possible in inequality it was a "delight in inequality".²⁵ In a way it was not a curse but blessing in disguise.

From another point of view Manu says - "Where the female relations live in grief, the family soon wholly perishes."²⁶ Thus to ensure happiness of women has been a task of men in mutual relationship. The status of women in

23 MS. III 59

24 MS. III 60

25 Religion and Society by Sri S. Radhakrishnan.

26 MS. III 57.

society therefore has to be viewed in the perspective of human relationship rather than from the perspective of law. While laws exist each human relationship is unique and contribute towards making of social relationship.

Beyond maintaining happiness in the family and beyond just mutual love in Western sense, Manu says - "He only is a perfect man who consists of the three persons united, his wife, himself and his offsprings, thus (says Veda) and (learned) Brāhmanas proposed this (Maxim) likewise, "the husband is declared to be one with the wife."²⁷

Thus even though society may have had given a junior position to women there was no hierarchy recognised in husband and wife relationship.

Ardhanārīśvara - In ancient Indian conception we have the concept of the image of Harapārvatī. Siva is called, "Ardhanārīśvara and stands for the symbol of one individual where man and woman together make the one whole "Man". Each part of male and female is like puruṣa and prakṛti and they are complimentary to each other. As stated by Dr. S. Radhakrishnan, 'the bisexuality of the human race conditions a division of labour.'²⁸ It does not mean that

²⁷ MS. IX 47

²⁸ Religion and Society by Prof. Radhakrishnan pps 140.

women are inferior to men. In society both male and female have their role. Man is the protector and woman as a lover, makes the family life a heavenly place. Man gets the rightside and woman the leftside in 'ardhanārīśvara', image.

✓ To make a family life happy there must be little less power to one party just as we find today - the left part is little weaker than the right. This is nothing but to keep harmony in an individual life where father works as a protector and mother rears up the 'child' with fond affection and care. So wife is referred to as 'Ardhāṅgī' in Hindu thought.

As Elizabeth Sloan Chesser rightly says - "How much better will the world's work be accomplished when sex antagonism gives way to the friendship and co-operation that must come with better understanding."²⁹

✓ As husband and wife are the two halves of one whole, the two should have the same spiritual and religious rights. Manu says that "marriage ceremony should be treated as optional to Upanayana and serving the husband is equivalent to staying in teachers' place."³⁰

At superficial level we may think that Manu has curtailed women's right to live as a counterpart of men. Some of the rights were enjoyed by women in Vedic age but after discussion about the background of the society it is now clear that Manu as a social philosopher has rightly

29 Woman, marriage and Society by Elizabeth Sloan Chesser. pps 3.

30 MS. II 67.

asked woman to think their husbands' place as the place of their teacher and do household duties and to respect husband as a teacher to find happiness in the family. The marriage age of men were ^{not} lowered so that at the time of marriage the age of the boy was much more than that of the girl. So that to adjust the whole circumstance new laws towards girls were formulated. But to compare the girls without Upanayana with Sudras, not only hampered woman's social status but also degraded their position though in reality it was never equivalent to the position of the Sudra - a non-Aryan over-powered class. Although the ideals of women were lofty enough, their comparison with Sudras gradually lowered the status of women.

Modern social thinkers would not be able to understand and evaluate the Dharmasāstra on its intrinsic merits unless it is seen in its historical perspective as Prof. Altekar has rightly said that "these people could not understand that the undesirable forms in Hindu practices seen today were due to historical causes."³¹ He further says that "the intrinsic merit, even in practical life, of our ancient heritage has the testimonies of foreign travellers in India like Megasthenes and Huen-tsung, at a time when the real spirit of Hindu Dharmasāstra was actually translated into practice in many ways."³²

31 Hindu Social Organisation by Prof. P.H. Prabhu. pps 340

32 Ibid.

Protection of Women

The Hindu society in Brahmanical era was patriarchal as well as monogamous. The family lineage, heritage as well as caste purity had much importance. Consequently protection of women was necessary to protect these values. Therefore, Manu says - "Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence."³³ The resemblance of some thought we find again where Manu says - "In childhood a female must be subject to her father, in youth to her husband, when her ^Llord is dead, to her sons, a woman must never be independent. She must not seek to separate herself from her father, husband or sons; by leaving them she would make both (her own and her husband) families contemptible."³⁴ Again Manu says - "A Brāhmaṇa shall be compelled to pay a fine of one thousand (panas) if he has intercourse with guarded females of those two (castes) for (offending with) a (guarded) Sūdra female, a fine of one thousand (panas shall be inflicted) on a Kṣatriya or a Vaiśya."³⁵ But "for (intercourse with) an unguarded Kṣatriya a fine of five hundred (panas shall fall) on a Vaiśya; but (for the same offence) a Kṣatriya shall be shared with the urine (of a donkey) or (pay) the same fine."³⁶

Medhātithi explains this sloka as quoted above.

33 MS. IX 3

34 MS. V 148, 149

35 Ibid VIII 383

36 Ibid VIII 384.

We may surmise from these slokas that unprotected women had also less protection from law. Though it is difficult to surmise the reason correctly one may assume that women were supposed to belong to somebody and therefore protected by somebody. In one place (VIII.359) Manu says that wives of all castes desire protection.

This approach to the problems suggests that women were regarded as a sort of property and therefore guarded with zeal. That was the feeling in almost in all societies in ancient times. Law givers like Manu and others proclaimed to the world that wife is the half body of the husband. Therefore it is illogical to deny property rites to women from this point of view. When property rights are denied to the women it is bound to affect economic and social status of women, as they have to depend economically on others even for their maintenance. Denial of property right will show us how exploitation of woman must have taken place in the past. Except perhaps *Strīdhana* (wealth of a woman) and that also at a time of marriage,³⁷ she has no other resource but to depend solely on the relatives of the husband and in a way this is not a good situation for a woman. There may be many reasons advanced to deny such rights to women but no reason can be good enough to deny them proper share of the husbands' property, specially when she is

37 Ibid IX 194.

described as Ardhāngī.

We may appreciate the reasons for concern for protection of women in the concepts of family, lineage, caste - purity and procreation which led to the lowering of status of women. All these concepts have lost their importance in the modern industrial society and therefore the concern for protection of women is looked upon as bondage of women. However, if we look at the importance in its time perspective, we will find that protection of women ^{was} ~~were~~ in fact protection of most cherished values and therefore an integral part to the way of life.

However new values have to be created to be in tune with modern times. Emancipation of women is vital for the growth of the society. Right conditions can only be created by restoring lost rights of education and property to women.

Property rights of women

Inheritance to property is linked to the rights to own property. As far as women's right to property ownership is concerned it seems to have changed over the time in India. In early ages the women were regarded as property and could be sold, given away or staked in a game as was done by Judhishtirā. When conditions such as this prevailed the right to ownership of property can hardly be conceived.

Manu however recognises certain rights of women to own property. The whole issue of property ownership is difficult to assess precisely because of certain contradictory points of view that appears in Manusmriti. For instance Manu says "A wife, a son and a slave these three are declared to have no property; the wealth which they earn is (acquired) for him to whom they belong."³⁸

Thus women may not have had the right to any property but Manu clearly recognises certain rights of women to property such as Stridhana.

Stridhana

Stridhanas could be acquired by a woman in six different ways i.e.

- 1) gifts given to her by her father, mother or brother,
- 2) gifts given to her during marriage by anybody,
- 3) gifts given to her by her husband as a token of love.

"What (was given) before the (nuptial) fire, what (was given) on the bridal procession, what was given in token of love and what was received from brother, mother or father that is called the six-fold property of a woman."

38 Ibid VIII 416

39 Ibid IX 494.

As the earlier sloka implies the earnings of a woman does not constitute stridhana, wages earned by a woman would be expected to be spent on family expenses rather than constituting a separate estate. Though this point is not irrelevant in case of misuse of money by the husband no protection has been provided to the earnings of women.

The stridhana mainly consisted of gifts, clothes and ornaments and bride price paid by the husband. However, Manu strongly despises payment of bride price. Thus the stridhana could not have composed a substantial estate. In later times gifts of landed property ^{are} is not unknown. However, Manu is not explicit about the nature of property.

The laws of inheritance of property after the death of a woman ^{are} is fairly well defined but the right of alienation of the stridhana is not. Thus one may assume that while women had the right ^{to} hold of the stridhana, they may not have had the right to dispose of such property at will. If this were true there ^{was} were hardly any reason for holding much property by women.

^{whether} The whole concept hinges on establishment of the fact that women were in legal terms "free" to sell, lend or otherwise dispose of their property. It appears that they did not enjoy such rights. Thus the right to the stridhana was also restricted.

However more important than holding given properties. are the rights to earn and create an estate, which also has been categorically denied. This is due to the secondary position of women compared to men in the society.

Widow

"The ornaments which may have been worn by women during their husbands' life time, his heirs shall not divide; those who divide ~~their~~ them become outcastes"⁴⁰ Thus the ornaments which do not constitute stridhana can be retained by the widow without giving it over to the heirs of the deceased husband. The sloka quite positively shows that women had the right to hold the ornaments that she used during the life time of her husband but nothing is mentioned in this sloka or elsewhere (i) about the right of the woman to sell the ornaments. (ii) about the landed or other property she may have enjoyed during her husband's life time. Thus there is an inherent ^{lack of} consistency between the slokas referred to earlier in the chapter and the present one and perhaps means that women could be custodians of certain properties such as stridhana but not own any property, in the modern sense of the term "own".

Unmarried daughter :

"But whatever may be the separate property of the mother, that is the share of the unmarried daughters alone."⁴¹

40 Ibid IX 200

41 Ibid IX 131

Similarly " But to the maiden (sisters) the brothers severally gave (portions) out of their shares, each out of his share one fourth part; those who refuse to give (it), will become outcasts".⁴² Thus daughters need is looked after quite well by conceding mothers and share of fathers property to her, though again her right to dispose of the whole or part of the property has not been made explicit.

"But when the mother has died, all the uterine brothers and the uterine sisters shall equally divide mothers estate"⁴³. Thus the right of all off springs to the property of the mother is recognised.

Main contradiction that emerges is in determining the real right of woman on strīdhana. When married women receive mothers property, these properties will constitute strīdhana. But the right of women to sell, to lend or to dispose to any other, is not recognised.

Thus the right of women on strīdhana was mainly of enjoying the strīdhana rather than 'owning' in the modern sense of the term.

In the present context of the society this is an unsatisfactory and unacceptable situation. Women now are getting education and are going out to work. Many of them

42 Ibid IX 118

43 Ibid IX 192

remain unmarried and lead a totally independent life. Even though this phenomenon is still not very widespread it is increasing. It is possible that the phenomenon of women's participation in all aspects of life will increase along with increase in spread of women's education. Thus women's right to property should be fully recognised.

In modern society property has many conotation even though Hindu code bill has recognised many rights of women in many other fields, her right is denied some times on legal basis and some times on the basis of old surviving prejudices.

An insurance cover may be considered a property in true sense of the term. However a non-working woman cannot be insured even if she needs an insurance. Similarly in bank loans and other privilages women get a raw deal.

One may summarise that even in advanced part of the Indian society women are still regarded as property and not those who are able to create property.

Acceptance of right of divorce also gives added need for acceptance ability of women to create separate estate.

One may say at least in upper strata of the society women are coming to a situation prevelant in early vedic age when they were equal partners with men in many activities.

However there is hardly any knowledge with us of the property rights of women in that period. Modern society therefore must look at the property rights of women rationally and strengthen out all the anamolies.

Education of women is also necessary towards their property rights without which mere legislation would not solve the problem. Thus work in two fronts ^{is} necessary i.e. legislation and education.

The property rights were denied to women because of the fact that the society was patriarchal, wherein son was valued and a girl was not. However Manu as a law-giver should have thought of the helpless condition of widows and women and he should have done some justice to them.

Unfortunately it appears from the chapters from Manu's work that no consideration was shown by Manu in this matter.

He laid down very many restrictions on women but did not utter a word against erring husbands. Moreover he has divided women into two classes. One class of women ^{with} sons and the second class of women without sons and their property rights differ.⁴⁴ One may conclude from this that the sole purpose of a woman is giving birth to a male child.

In any case Manu is to be blamed for such a lapse on his part in not protecting woman after the death of their husbands. So the criticism against Manu in this regard seems to be justifiable.

44 See Chapter IX 'Laws of Manu' by Sri G. Buhler.

CHAPTER III

PART II

MANUS VIEWS ON 'MARRIAGE'

Marriage plays a very important role in society.

✓ Whether it is confucian, Christian, Islamic or Hindu philosophy, marriage has been regarded as an important institution for building up of a healthy and sane society.

That is the reason why all the ancient law givers like Manu, Confucious and others designed their laws to fit their perception of an ideal society. Some of the concepts of Manu may appear in to-day's changed circumstances to be orthodox and irrelevant but they have to be judged in the perspective and need of their age and social context of their period. "All people of Aryan origin realized very early in their evolution that the relationship of the sexes had to be lifted out of its biological foundations; if it was to give any lasting happiness. So the Hindus no less than the Christians made marriage a sacrament."¹

Marriage creates a family which is the smallest social unit and building blocks of the society. Therefore, creation of good families leads towards the formation of a good society.

Manu thinks that marriage is an eternal tie and it has individual, social and religious value. It is the *sarira saṃskāra* of all the sixteen *saṃskāras* which cover all periods from cradle to the grave in a man's life. And this *saṃskāra* should be observed in proper age and time. The best time of marriage is after *saṃāvartana* i.e. after completion of studies.²

Manu has laid great importance to *Grhasthāśrama* when he said that *Grāhastha* is the best *āśrama* as it supports

¹ A passage to England by Sri N.C. Chaudhury pps 127.

² Manusmṛti III.4.

the other three.³ "As all rivers; both great and small find a resting place in the ocean even so men of all orders find protection with house holders"⁴. Again Manu said that without householder other forms of āśramas cannot exist. It is just like the breath of the three other stages. A house-holder gives support of food and knowledge to all so it is the most excellent period of life where a man can get worldly as well as heavenly pleasure by serving them well.⁵

The concept of marriage is like that of ardhanārīśvara. With half of a man and half of a woman a whole being is made. Man is incomplete and half but when he marries his other half i.e. woman, he gains a whole personality. Manu differentiates between the responsibilities of work of men and women on the basis of natural capacities. Women are naturally soft and delicate and men are hard and strong. Both of them have their different dominions in a household. They would be free in their respective dominions where they are given full powers. In combination and balance of these two sides of responsibilities through marriage a whole personality, which is the backbone of society is formed.

Sri P.V. Patwardhan in "Manuvāda" has said that - "In Manu's view a man and woman have to live together for the satisfaction of their basic needs of sex, hunger, shelter,

3 Ibid VI.89

4 Ibid VI.90

5 Ibid III.77 to 79.

security, love and the rearing of children.⁶ This being so, the conjugal pair cannot be considered as two separate individuals but only as a composite social unit. Smallest unit of Hindu Society is not a man or a woman as believed by the modern sociologists and Western societies but a family consisting of man and woman which is a very basic difference between the two ways of thought. Concept of marriage is based on Dharma and is built up through 'Samskāras'; it is a true, indissoluble and eternal tie, "neither by sale nor by repudiation is a wife released from her husband"⁸.

In Manu's view, marriage is not based on contract i.e. a formal agreement between husband and wife, and is not just a legal binding. Hindu marriage is performed on the witness of 'agni' which is eternal and thereby transcends beyond formal contract. It has much more emotional value than that which a contractual way of marriage provides.

Marriage is performed only once. 'Sakṛt Kanyā pradiyate'⁷ is the accepted law in the view of Manu, of course if it is a good match. Manu says again that 'neither by sale nor by repudiation is a wife released from her husband, such we know the law to be, which the ^{non}hard of creatives (Prajāpati) made of old."⁸ Thus Manu accepts the law of ancient ages and asks the society to follow it for

6 Manuvāda by Dr. M.V. Patwardhan

7 M.S. IX 47

8 M.S. IX 46

the benefit of the society. But Manu displays great sensitivity as he tries to balance the finer feeling of the husband and wife with their practical problems and natural urges when he says - "a sick wife who is kind to her husband and virtuous in her conduct, may be superseded only with her own consent and must never be disgraced."⁹

The marriage should produce deep rooted inner feelings, rather than be based on the principle of give and take, which is devoid of sentiment. This is one of the fundamental views of marriage of Manu.

Manu believes that marriage is an eternal tie and that happy marriage can be had only by mutual fidelity until death and considers it to be the highest law of the world.¹⁰ But he does not make it a rule and merely wishes that if mankind should follow this principle it would be better for them. It will solve many unnecessary problems of the society and ultimately give birth to a noble and healthy race.

No two human beings are of similar nature. Therefore, if a pair is to live together and lead a happy conjugal life. They have to adjust themselves to each other on certain points. And it is mutual fidelity which can help fulfillment of this objective.¹¹

9 MS. IX 82

✓10 MS. IX 101

11 MS. IX 102.

Manu says, "The home in which the husband is always pleased with his wife and the wife is also always pleased with her husband indeed is the most blessed home."¹² It is very easy to understand that if both of them are pleased with each other they cannot hanker after anything else.

It reminds us of Bertrand Russell's statements -
 ✓ "Most people will agree that a sex relation is better when it has a large physical element than when it is purely physical. Indeed, the view which has passed from the poets into the common consciousness of civilized men and women is that love increases in value, in proportion as more of the personality of the people concerned enters into the relation."¹³

This feeling has universal appeal and it is true even today. It is the adjustment of two individuals which makes the life healthy and happy. If the stress is given only to individual happiness it is bound to breed unhappiness in one's life and ultimately the society suffers. It is husbands' and wives' joint responsibility to take into account each others interests and serve each other through marriage without disrespect and thus they will serve the society to grow. Much care should be taken before getting married but once married they should try their utmost to take the

¹² MS III 60

¹³ Marriage & Morals by Bartrand Russel.

responsibility of leading a happy life and thus to serve the responsibility towards the society. This sense of responsibility is lacking today within marriage and outside it and everybody is trying to fulfil his own selfish motives which are harmful to the society. In modern days 'an easy divorce' is the solution to troubles of marriages.¹⁴

Even though marriage has been regarded as a sacrament and indissoluble, Manu as a conscious, practical and liberal law giver made provisions for the dissolution of marriage under certain circumstances. For instance a man may abandon his wife if she is 'blemished, diseased or deflowened and (if she has been) given in fraud.'¹⁵ This shows that in case a man has been cheated by the giver of the damsel (usually father of the maiden) then the man can abandon her. But Manu seeks to prevent such occurrence providing for penalty directly to the giver of the damsel. If the giver is not truthful he can be fined ninety-six panas by the king.¹⁶ Thus Manu in a very logical manner tries to prevent discord in marriages.

Wife's right to conjugal life is also recognised when Manu prescribes that a wife waiting for specified number of years if her husband is away need not wait any more.¹⁷

¹⁴ Ibid

¹⁵ Manusmṛti IX 72

¹⁶ Ibid VIII 224

¹⁷ Ibid IX 76.

According to Nand¹⁸ she can take another husband after waiting the due period. The specification of waiting period is also interesting as it does express Manu's all pervading concern for social order and social duty. If the husband is away on sacred duty waiting period was eight years, for fame or learning waiting time was six years and if for his own pleasure the period of waiting was only three years. The sacred duties have social context which have been given the highest importance, acquiring learning or fame though one more personal are of higher value than pleasure.

Wife's right to conjugal happiness is further recognised when she is allowed to be disrespectful to a husband who is mad, a outcaste, a ennuich, a distitute of manly strength or diseased.¹⁹

However, Manu seeks to avoid occurrence of disordent marriages by providing guidelines and laws for match making. Basis of these guidelines and laws are -

(1) marriage among equals (2) virtuous conduct and (3) the concept of duty. If these are followed chances of discord are reduced. For instance Manu has insisted on marriage amongst equal castes which is in his time meant equality of social and economic status and also of cultural background.

18 "Laws of Manu" by Bahler.
Footnote on Sloka MS IX.76

19 Manusmrti IX 78,79.

A review of these circumstances shows that Manu had taken into account a variety of situations that may arise and necessitate a dissolution of marriage. In these circumstances he has made provisions and indicated punishments for failure in observance of duties of husbands and wives.

India passed through long periods of foreign invasions and foreign rules which affected very much in changing the social and political environment of India. Many unnecessary evil laws and customs came into vogue which were very much different from what Manu wanted.

Manu's commentators have interpreted Manu to fit in with particular conditions of the society and their own prejudices. Thus the Hindu Society developed many undesirable customs and was sanctioned by the society which sometimes were ^{which} ~~contradictory to the essence of Manu's laws~~. Some of these ^{some} have been challenged in modern times by various thinkers and more need to be challenged.

In the olden days the caste was the ^{serve} pressure of skill and particular types of knowledge and thus created cultural unity amongst a caste. Further the transport facilities were inadequate and marriages were performed within a region. However all these are changing now and then and would also affect Manu's guidelines but basic principles of marriage

among equals, virtuous conduct and relevance of duty should prevail if a same society has to exist.

Purposes of marriage -

Dharmasampatti, Prajā (consequent freedom from falling into hell) and rati (sexual and other pleasures) are the principal purposes of marriage according to the Smritis.²⁰ Dr. K.M. Kapadia also believes that marriage has its three-fold purposes in Hindu mind.²¹ As a dharma i.e. duty, man must marry and perform his rites with the accompaniment of his wife.²²

~~Mention of~~ importance of performing the religious rites ^{is} mentioned by Manu in the following sloka ~~and which~~ provide an important reason for marriage. 'Religious rites therefore are ordained in the veda to be performed (by the husband) together with the wife.'²³ "Immediately on the birth of his first born a man is (called) the father of a son and is freed from the debt to the means."²⁴

House-holders are able to meet three debts with which they are born - (a) the debt to the Gods - by performing sacrifices, (b) the debt to the rsis by maintaining study and teaching of the Vedas and allied learning and (c) the debt to the ancestors by begetting children²⁵ and performing śrādhās etc.

20 History of Dharmaśāstra by Dr. P.V.K. Kane Vol. II Part. I

21 Marriage and family by Dr. K.M. Kapadia.

22 Manusmṛti IX.96

23 Ibid IX.96

24 Ibid IX.106

25 The cultural Heritage of India. Vol. II, pps 347.

In to-days context three debts are also relevant. Society may take the position ascribed to God. A man should pay a debt towards his society. Secondly, he should be grateful and respectful and support educational institutions and teachers, lastly, his role of procreation remains unchanged.

In modern context these debts may assume new meaning. Debt to the gods may not have much meaning in the modern times. No one will call this an important reason but debt to the society may replace the debt to the gods. In fact raising or lowering of age of marriage ^{is} ~~are~~ often made by the society to suit its convenience. In many countries including our own marriage is looked upon as a social phenomenon and attempts are made to regulate it. Inner instinct of normal human beings is to procreate and perpetuate own race and it is accepted today. Throughout the world this phenomenon can be very well observed in the fact that minority countries tend to increase population in larger proportion to the majority communities. This happens because people of these countries feel a responsibility towards increasing these races.

Purity of marriage -

Manu's concept of marriage was very holy, and he gave much importance to it as a necessary condition for performing religious rites. That is why he says that if a man marries

for getting a son he can beg alms but this is not allowed in case of one who is marrying second time to fulfil his passions.²⁶

But the wife's duty to perform the sacrificial rites ceases as she loses her husband. A widow can try to get a son by the practice of 'Niyoga' but she can not marry to continue her sacrificial rites.²⁷ The system of Niyoga has been justified to provide a male child by a wife so that sacrificial rites can be continued. Right to sacrificial rites was overriding concern and procreation of male child was a sacred duty. Even though Manu legalises the system as many other systems that were prevalent amongst the twice born with which he was not sympathetic. He appears clearly denouncing it. The 'practice' he says 'is reprehended' by the learned of the twice-born castes as fit for cattle,²⁸ and have occurred during the time of Vena who was a godless King and whom the Brāhmanas had cut up with the blade of kusha grass. Manu also says that there is no mention of appointment of (widows) in sacred texts.²⁹ Manu also prohibits appointments of widows by twice born men as this is violation of eternal law.³⁰

However importance of this particular reason for

26 Manusmṛti with the Manubhāṣya of Medhātithi by G.N. Jha, C.V.

27 Aspects of Social & Political System of Manusmṛti by Prof. Rangaswamy Aiyengar.

28 Manusmṛti IX.66

29 Ibid IX.65

30 Ibid IX.64.

miyogas has lost grounds and would continue to loose grounds in modern society. The above quotation shows that one prime factor in marriage was getting a ~~male~~ child because maintenance of religious rites was through males. It was the duty (dharma) of every householder to follow it as all aims in life were centred around dharma. The wives were a necessary part of observance of these rites but they did not have the necessity to marry again to continue these rites as their ancestors would be changed if they marry again. However, this particular reason for marriage has lost ground in modern times and therefore the validity of the concept is in doubt.

Manu admits the basic instinct of both the sexes and therefore attached importance to 'rati'. He showed many ways how a coveted conjugal union can be obtained.³¹

Thought in this respect of sex education has only recently started in the West. Orthodox Christian views have always shunned discussions on the topic of sex. It has only recently been admitted that sex is an important factor in marriage. Russel's view supports that of Manu when he says - "Marriage differs from other sex relations by the fact that it is a legal institution."³²

Similarly Rangaswami Aiyangar opines that "both service and sex pleasure can be obtained by union outside

31 Ibid IX.45

32 Marriage and moral by Bertrand Russel pps 114.

wedlock, but not the ritual and spiritual gains to which the trained mind will attach more value.³³

Even today we find that the marriage has the same purpose even though the age and environment may have some influence on them and the respective importance of the purposes may have substantially been changed.

Manu has explained that laws tend to change with the age of the human race.³⁴ Medhātithi believes that the laws laid by any ancient law-giver should not be taken as rigid and static principles but they should be given in their operation a certain amount of flexibility and modifiability to suit the varying conditions of country, race and families.³⁵

Manu as a law-giver of ancient India tried to make a civilized and cultured race under one society out of a variety of races then inhabiting in India. From the early dawn of civilization we see Aryans were trying to settle in India. In Manu's time i.e. 300 B.C. to 200 A.D. India was swept by one after another of foreign invasions. Manu with a deep insight and tolerance as the basic motif tried to build up a society where marriage played its pivotal role in binding the societies together, that is why grhasthāśrama was given the most importance in a man's life to breed a

33 Aspects of Social and political System of Manusmṛti by Dr. R. Aiyengar.

34 Manusmṛti 1-85

35 Medhātithi on Manusmṛti 1.85.

cultured and healthy family as the basic unit of the society.

It appears that ⁱⁿManu's time the evolution of marriage must have been complete so that Manu discourages marriages between the same families or sapindas, for which there are now good genetic reasons.

It is very common in South India where we find the ideal and coveted match is between maternal uncle and niece. However, Manu did not support such a marriage and it has been observed that it is harmful.

But in today's context 'Sagotra' does not have the real meaning as people have scattered all over India and there is hardly speaking any 'sagotra' in the true sense of the term. But sapinda means the same family where the same blood flows. Control of marriages in sapinda therefore has much genetic value.

If we keep the Anuloma principle alive and add to it regional inter-marriages, it will help to breed a healthier race of Indians. It will also help national integration and reduce caste differences. In the past anuloma form of marriage was quite common. The Mahabharata can provide us many examples and show how they were successful in the context of societies culture.

On the basis of earlier discussion, we see that Manu regarded a good family as the most important institution for

the benefit of individual as well as for the benefit of the society. For the harmony in married life and to build up a good family it is necessary according to Manu³⁶ that the marriage alliances are performed between people of similar social background - that both are healthy and that money does not unduly influence the above criteria.

A man may not be rich but may be well-versed in studies and belong to a good family heritage. But if his partner is of uneducated and with low family heritage then the marriage will be incompatible. Each family has its values within the overall social value system. Therefore if the partners are chosen from the same social category the family life becomes peaceful - conflicts are reduced.

Manu has given stress on the families endowed with knowledge rather than wealth.³⁷ But in today's context we find that wealth is weighed more than knowledge. Bride and bridegroom are chosen on the basis of the money their families possess. This is a basic degradation of social value which is a result of industrialisation and economics.

Certain basic human nature never differs in place, age or time. That is why a close study of details of choosing a match shows that they were designed to improve and maintain, personal, physical and behaviouristic characteristics of the family.

³⁶ Manusmṛti III.6,7

³⁷ Ibid III.66.

On the beauty of the bride the happiness of the whole family depends. Beauty here means not only physical beauty but also of good disposition which is developed in a cultured family. Manu says if the wife is radiant with beauty, the whole house is bright; but if she is a destitute of beauty all will appear dismal.³⁸ Further he says that, "If the wife is not radiant with beauty she will not attract her husband, but if she has no attraction for him no children will be born."³⁹

In describing contribution of women to a family, Manu says that "the production of children, the nurturing of those born and the daily life of men, woman is visibly the cause. For offspring the due performance of religious rites faithful service, highest conjugal happiness and heavenly bliss for the ancestors and oneself depend on one's wife alone."⁴⁰ It seems that Manu is partial towards men as he has not discussed about men as much as he has about women and their merits and demerits. As he believes that it is wife who has the capability to make the home radiant with beauty, much more than a husband as they are busy in earning money for livelihood.

* It reminds me the saying that "on seeing the house you can understand the lady householder." In Indian society

38 Ibid III.62

39 Ibid III.61

40 Ibid IX 27,28.



much responsibility is given to women to make the house a happy living place. It is very natural for a woman to look after the details of household much more efficiently than any man generally does. They can do it but it is much more natural to a woman just like breast-feeding of a baby is very natural to a woman.

Manu has distinguished the responsibilities in the society in such a balanced way that every family can have a happy and contented life and serve the society for its common good. "Endowed with the qualities of beauty and goodness, possessing wealth and fame, obtaining as many enjoyments as they desire and being most righteous, they will live a hundred years."⁴¹

Now our country has got freedom. There have been so many changes in the society due to foreign rule, industrialisation and other factors. If at this time we try to understand and use these deeper feelings and reasonings of Manu in reconstructing our society, we will go forward in a progressive way. We should keep in mind that to follow Manu's thoughts in modern times we should need to study the depth of his feelings and reasoning. Mere copying of Western Countries may not be helpful in the long run due to basic cultural and value differences that exist between the West and us.

41 Ibid III 40.

Individual freedom has crept in to the society through industrialism. Its effects can be seen in all aspects of city life in India. Some of them are quite harmful for social development of the country. We can see in the United States and in other advanced industrial countries effect of this in the alarming growth of broken marriages, illegitimate children and other sexual abnormalities. For enjoying personal freedom many people in these countries are abandoning their responsibility towards the children and spouse. This would weaken the state and also the race as indeed some races are becoming weaker. In some countries the population growth has stopped and in some the number is so reducing that it is amounting to a racial suicide. This is due to the fact that people in these countries are no longer willing to take the trouble of rearing children. In our country individualism has to be subservient to the society and its path is through good compatible families. To enable preserving family life it has to be based on basic principles on which Manu's concept of family is based i.e. compatibility of status, duty and virtuous conduct. However, to make this effective spread of education is necessary and that education should be not only vocation oriented but also life oriented.

When we say life oriented we mean that education should be such that a person would be able to see his or her role in

the society clearly. That means his responsibilities and relationship vis-a-vis others should become clear to him or her. Through Manusmṛti the effort is to clarify expected behaviour from people not only through laws but advices.

• Forms of marriages -

Manu has recognised eight kinds of marriages i.e. Brāhma, Daiva, Ārṣa, Prajāpatya, Aśūra, Gāndharva, Rākṣasa and Paisācha⁴². Four are legal and four are not approved not from the point of individuals but also from the point of view of the society.⁴³ It seems that these are the marriages known from the primitive age. With the dawn of civilisation man regulated the system of marriages according to their own values. The seventh and eighth seem to be the most primitive marriages and Manu calls them worst of all others.

Manu does not give a strict ruling that the first four are coveted and others are punishable. This shows the well-balanced mind of a social organiser. He knew that these were the marriages prevalent among various classes and therefore accepted them as such. He legalises all the marriages excepting Paisācha and Aśūra.⁴⁴ Dr. R.M. Das says that Manu has taken human weaknesses into account while he legalised six of the eight forms of marriages. He has

42 Ibid III.21

43 Ibid III 39 and 41

44 Ibid III 23 to 26.

legalized the deviations of human beings from the path of virtue under certain conditions so that they might get the chance of becoming better men and women later on even though they might have done undesirable acts in fit of passion.

Though Manu recognized the eight forms of marriages he preferred the first four - (1) Brāhma (2) Daiva (3) Ārṣa and (4) Prajāpatya.

(1) Brāhma - The gift of a daughter after ^{decking} ~~deleting~~ her with costly garments and honouring her with presents of jewels to ^a ~~the~~ woman learned in the Veda and ^{of} ~~of~~ good conduct whom the father himself invites is called the Brāhma rite.⁴⁶

In this marriage both the bride and the bridegroom are honoured and the father gives the daughter as a gift to her partner whom he has selected very carefully for the well-being of his daughter. Manu attributes the highest merit to this type of marriage.

Even today we find this type of marriage is generally practised and no objection can be raised against this form though it was an old practice.

The second form is Daiva where Manu says - "The gift of the daughter who has been decked with ornaments to a priest who duly officiates at a sacrifice during the course

46 Manusmṛti III.27

47 Ibid III.28

of its performance.⁴⁷ This seem to have no relevance in modern times. because of the fact that sacrifice has lost its meaning and nowhere ^{is} of it practised as it was in the past.

Ārsa marriage is that one where the father gives away his daughter according to the rule, after receiving from the bridegroom for the fulfilment of the sacred duties, a cow and a bull or two pairs - is called the Ārsa rite. Here the gift has been given for the benefit of the sacrifice and not as the bride price.

In modern times sacrificial performance is out of picture. Therefore, there is no such Daiva or Ārsa marriage now-a-days and these become meaningless in the present set up of society.

• Prajāpatya - The gift of a daughter by her father after he has addressed the couple with the text, "May both of you perform together your duties and has shown honour to the bridegroom, is called Prajāpatya.⁴⁸ Here duties mean that both the husband and wife must share all the social and religious duties together.

This system of marriage is applicable in modern society since it is simple and devoid of gifts etc. We find Brāhma and Prajāpatya are the two marriage systems which

47 Ibid III.28

48 Ibid III.30

have importance in modern times.

An ideal marriage is that which follows both Brāhma and prajāpatiya. Then it will be beneficial for both the individual and the society and a healthy and happy nation must be born out of that. Then comes the four undesirable marriages according to Manu viz. (1) Asūra (2) Gāndharva (3) Rākṣasa and Paisācha.

(1) When the bridegroom receives a maiden after having given as much wealth as he can afford to the kinsmen and to the bride herself, according to his own will, it is called the Asūra rite.⁴⁹ This form of marriage is despised as parents are selling their daughter by accepting a bride-price. It is as good as a sale of article in the form of a girl by force.

However, prevalence of bride price indicated some value of the women which was deteriorating much in Christian era. Manu is strongly against bride price as he thinks that it is the selling of the girl. Marriage should not be arranged with the influence of money as it is a very holy sacrament. Manu is clear that the effect of this marriage cannot be good. Dowry system is condemned in a way.

49 Ibid III 31

Manu is clearly against any bride-price. Dowry however is not mentioned. Gifts by the maiden's father and relations becomes 'Stridhana'.⁵⁰ However, dowry is a prevalent evil in the society. If people were virtuous and followed principles of Manu, this evil can be eliminated. Passing of anti-dowry law is not enough. Social reformers should take up the issue and they can draw support from Manu. Whether bride-price is still prevalent must be denounced as it has evil effects on society.

Next to this is the Gāndharva Vivāha.⁵¹ It is the voluntary union of a maiden and her lover. Gāndharva rite springs from mutual love. As this type of marriage is based on lust, Manu does not recognise it as a pure one but he knows that it can happen quite naturally in human society. It is very natural in animal life to choose mates. Spontaneous mate choosing does not provide a sufficient degree of control of the sex, impulse or passion is alone guide in this choice. This form of choosing may partly account for the disorganisation in marriage as it is evident from the number of divorce prevailing in parts of Western countries particularly in democratic nations.

Manu has not mentioned "Svāmvara" marriage. He must not have found any speciality in it as it was practised only

50 Ibid IX.194

51 Ibid III.32

by few kings - not by the mass - so there is no point of referring to it from social point of view and it was better to be silent..

Gāndharva marriage which is quite frequent even today does not have firm rooting as the partners choose themselves out of emotions and lust and sometimes without regard to their different cultural, religious and racial values and differences. Marriage is a process of continuous adjustment which becomes too difficult in Gāndharva marriage and after partners find it difficult to adjust, the result is divorce. However, it does not mean love marriages are always failures. Manu only gives a warning in this respect but he approves such love marriages.

But in today's context we can find that due to urbanisation and easy communication, on one hand education and liberty of women on the other, men and women are mixing freely and they have enough scope to judge each other in proper perspective, so that Gāndharva marriage though criticized by Manu as unsuitable in his time may have a role in modern society. Love marriages are encouraged in Western countries and in our country also. Manu warns against the inherent danger in Gāndharva marriage while approving this form of marriage. However, in modern times some of the dangers of Gāndharva marriage may have been reduced due to

equalisation of culture, at least in cities where this type of marriages ^{are} prevalent by increased communication, education and adoption of varied occupations.

The question of adjustment and individual value system is a thing which is absolutely personal. That is why it is the partners' individual personality which matters most to have a contented and happy life though it may be a Gāndharva i.e. love marriage or a Brāhma marriage. The purpose of ~~xxxx~~ marriage as discussed earlier is to bring about the happiness to wife and husband both.

In India we can see that cinemas, Television Sets etc. are projecting a type of love marriage which is completely unrealistic and that these are influencing the young mind and thus ruining the society specially the uneducated and poorer classes to whom cinema is the only source of recreation and information.

In India religious influence on marriage still persists but some urbanised people are copying Western behaviour in marriage and conjugal life. This is definitely harmful. Instead of copying the West if we can remove many of the burdens which are placed on marriage practices in the name of religion and perform marriage as a sacred act we will be the gainer. In ancient days everything even

marriage was based on morality which is deteriorating now and it must be checked, otherwise society cannot grow in the true sense of the term.

The third form of undesirable marriage is Raksasa where the forcible abduction of a maiden from her home while she cried out and wept after her kinsmen were slain or wounded and their houses broken open.⁵²

This form of marriage was very common in India at a time when so many invaders in the early times invaded India. Patriarchal society was mostly prevalent all over the world and people who won, wanted to take revenge by ruining the virtue of the enemies female-folk as one of their victorious feat. In such form of marriages force was used and in marriage, mutual love is desirable and also expected. Force is indeed meaningless in marriages.

This form of marriage is not suitable for a cultured society, therefore Manu condemns this type of marriage. This type of marriage is clearly unsuitable in modern times. Recent example of Pakistan soldiers' behaviour towards Bengali women or American soldiers' attitude towards the Viet-cong women has been much condemned. The action of these soldiers was responsible for their own demoralisation which led to the fall of their armies. There is no usefulness of this type of marriage in modern India. It was also condemned in Manu's time.

⁵² Ibid III.33

Lastly the Paisacha is the most despicable form of marriage which was in vogue in Manu's time though not practiced much. When stealthily a man seduces a girl who is sleeping, intoxicated or disordered in intellect that is the eighth, the most base and sinful rite of the ^a Pisachas.⁵³

In present times forcible seduction of a women leads to punishment for man. Incidents of this type though rare ^{are} much condemned. However, more protection is needed to women.

Manu's view of marriage is based on Patriarchal family which was prevalent then in India. The whole conception of female virtue has been built up in order to make the patriarchal family possible.⁵⁴ We have knowledge of these types of families from all over the world since in every civilization till modern age.

Manu laid laws to build the strength of the family which helped to grow a cultured society. He says that a girl is protected by her father in her childhood, she is protected by her husband while she is in youth and she is protected in her old age by her son so that a woman is never fit for independence.⁵⁵ Yajñavalkya also echoes this view.⁵⁶

53 Ibid III 34

54 Marriage and morals by Dr. Bertrand Russel

55 Yaj - Smṛti - 1.85

56 MS. IX 3

Here the term independence does not mean real freedom but 'Svairācāra' i.e. working in violation of social order or discipline and protection. Here it means 'taking care of a woman as a social trust should be taken care of in her childhood by her father, in youth by her husband and in old age by her son. If a girl has no guardian, the king becomes her guardian. A defenceless or destitute woman becomes the king's charge. Manu has discussed how to look after the woman in great detail.⁵⁷

It seems that Manu wanted to give enough freedom for woman as he says that no man can completely guard women by force; but they can be guarded by the employment of the following expedients. He describes the expedients in the following śloka - 'Let the husband, employ his (wife) in the collection and the expenditure of his wealth, in keeping everything clean, in (fulfilment of) religious duties, in the preparation of his food and in looking after the household utensils.⁵⁸

He further explains the manner of guarding womenfolk in a sloka which is given below -

'Women confined in the house under trustworthy and obedient servants, are not well guarded; but those who of their own accord keep guard over themselves, are well guarded.'⁵⁹

57 MS. IX 4,5,6

58 Manusmṛti IX 10,11

59 Ibid IX.12

This means that the women is well guarded only when she guards herself to be in the path of dharma on her own accord and cannot be well guarded by force or by appointment of servants.⁶⁰

The whole concept appears to have been forwarded to develop division of responsibility and relationship of trust rather than one of mistrust and hierarchy^{e ar} of power. The kind of relationship that has been promoted in this sloka is in conformity with the running thought of Manu for promoting healthy relationship in a family.

But Manu is very cautious just like a father before her daughters marriage and husband for his wife and son for his mother as Manu is the father of the society. He was a good social organiser to have treated the women with such care and tenderness as they needed at the same time without restricting them with strict laws and rules. His exposition displays a fatherly affection towards society rather than a disposition of a modern legislative assembly.

He was very cautious in giving freedom to women because in every sphere of life there were anti-social elements and, as such freedom was hardly possible. In brief he wants to say that it is a social need to protect women from anti-social elements.

60 Ibid IX 12,10

Today women are given much freedom socially and legally but they cannot enjoy it in the sense of the real term. They have to be cautious today from the anti-social elements which are much prevalent in every sphere of busy industrialised modern life, so that they may have to enjoy restricted freedom. Even the police in station, the boss in service, husband's friend can not be relied on. Mannu said that even a man should not sit lonely in a place with mother and sister as his natural instinct can overcome his moral view.⁶¹ How psychologically true it is that is why Mannu wants to restrict the freedom to be enjoyed by the women.

✓ The animal instinct is present in human beings and is only controlled by culture and social values. Due to natural physical weakness women have to be protected, and perhaps even in Indian society. In U.S.A. where the concept of life is very different people do not give stress on morality. But Indian society gives much importance on sex morality which can be relaxed a little but then the deviations will have to be checked. When instinct is in command it is in man's power to control it but it needs moral values and understanding. Neither law nor fear of religions penalty can overcome this. The teenagers of educated class are much bewildered and like to follow the

61 Ibid II 215

Western trend where there is freedom in every thought. But it is necessary for a society like ours to make this natural tendencies of life clear to them. When they enter adolescence so that they may understand the value of it. Such education should be extended even in uneducated classes so that it may help the society to have a better outlook towards sex and its proper role. Both parents and teachers have a very important role in imparting such education. As stated by Bertrand Russel - "We have here to take account not only of the adult behaviour inculcated by a code, but also of the early education designed to produce obedience to the code and in this region, as everyone knows, the effects of early taboos may be very curious and indirect."⁶²

To maintain the lineage in which Hindus lay great stress women have a great responsibility. The husband after conception by his wife becomes an embryo and is born again of her, for that is the wifehood of a wife (gāya) that he is born (gāyate) again by her.⁶³

The idea is taken from the Veda - "Ātma Vai putranāmāsi".⁶⁴
The same idea is referred in Aitareyabrāhmaṇa.⁶⁵

In order to keep the lineage pure much caution is shown towards the womenfolk. Manu further says - "As the male is to whom a wife cleaves, even so is the son whom she

⁶² Marriage and morals by Dr. Bertrand Russel.

⁶³ Manusmṛti IX 8

⁶⁴ नया च श्रुतिः - आत्मा वै पुत्रनामासि"

⁶⁵ 'पतिं जाया' प्रविशति मन्त्रेन पूज्यते मातरम् । तस्या पुत्रवन् भवति ।
इत्युक्ते मासि जायते । तज्जाया जाया भवति यदस्या जायते पुत्र
भवति ।
(VII 12)

brings forth, let him carefully guard his wife, in order to keep his offspring pure."⁶⁶ This tenderness in guarding the womanfolk is alive all though Manu's codes of law to give the stress on pure lineage and healthy family. Kullūka comments that the son will be born according to the qualities of the husband if he is good and properly married, good son will be born and vice-versa.⁶⁷ So that husband should be careful about the preservation of his good qualities. He further says by sacred tradition the woman is declared to be the soil, the man is declared to be the seed, the production of all corporeal beings takes place through the union of soil with the seed.⁶⁸

"In some cases the seed is more distinguished and in some the womb of the female; but when both are equal, the offspring is most highly esteemed.

On comparing the seed and the receptacle (of the seed) the seed is declared to be more important; for the offspring of all created beings is marked by the characteristics of the seed.

Whatever (kind of) seed is shown in a field, prepared in due season, (a plant) of the same kind, marked with the peculiar qualities of the seed, springs up in it.

66 Manusmṛti IX 9

67 Kullūka's comment on IX 9

68 Manusmṛti IX 33

This earth indeed, is called the primeval womb of created beings; but the seed develops not in its development any properties of the womb.

In this world seeds of different kinds, shown at the proper time in the land, even in one field, come forth (each) according to its kind.

The rice (called) *vrihi* and that called *sāli*, *mudgā*-beans, *sesamum*, *māsha*-beans, *barley*, *leaks* and *sugar-cane*, all spring up according to their seed.

That one plant should be sown and another be produced cannot happen. Whatever seed is sown, a plant of that kind even comes forth.

Never therefore must a prudent well-trained man, who knows the Veda and its *Angas* and desires long life, co-habit with another's wife.⁶⁹

All these verses related to this idea about seed and soil show that Manu wanted to preserve the virtues of woman for the creation and maintenance of a cultured and healthy society, that is why he has given woman an esteemed position by discussing her position thoroughly and he says even a weak husband should look after his wife.⁷⁰

69 Ibid IX. 34 to 41

70 Ibid IX 6.

She should be protected by all means. It is one of the important duties of a husband. In the sense he is a 'Nātha', a protector of the wife and the wife becomes 'Sanātha' after marriage.

Manu appears to be liberal when he prescribed rules of remarriage of a woman abandoned by her husband or a widow. While describing the twelve sons, he describes that if a woman abandoned by her husband or a widow of her own accord contracts a second marriage and bears a son, he is called the son of a remarried woman.⁷¹

Hindu code bill passed very recently in the year 1955 ^{has} have legalised remarrying of divorced women. But Manu approved of it two thousand years back and showed to the society the benefit of remarriage, even though he approved it under certain circumstances.⁷² But with the social and political change, environment changed and Manus proposition lost ground.

But now we are in independent India and the social benefits that we are getting should have the right perspective and society should help us to move forward as shown by Manu in his ancient law-book with suitable modifications.

Again Manu describes that a maiden can be given only once, 'Sakrt Kanyā Pradiyate',⁷³ that is the sacred text which

71 Ibid IX 175

72 Ibid IX 1

73 Ibid IX 47.

refer to marriage. The appointment of widows is nowhere mentioned nor is the remarriage of the widows prescribed in the rules concerning marriage. These views seem to be contradictory but these views seem to be later on included according to the changes in ethical and social value in later ages.

Again we find liberal views of Manu while describing widow problems. Niyoga system as it was prevalent then but he condemns it later on. As he says - "This practice which is reprehended by the learned of the twice born caste as fit for cattle is said to have occurred even among men, while Vena ruled."⁷⁴ He again says - "That by twice born men a widow must not be appointed to co-habit with any other, for they who appoint her to another man will violate the eternal law."⁷⁵

Niyoga system appears inhuman when we think of brother-in-law (who is like her own brother) marrying his sister-in-law for the sake of getting a son. The problem could have been solved by accepting brother-in-laws son as her own and that son could have fulfilled all the purposes of a marriage. Since the most important purpose of marriage is to maintain the lineage. That is why Manu says - "While solving the problem of inheritance that if among brothers one has a son,

74 Ibid IX 66

75 Ibid IX 64

among, Manu has declared them all to have male offspring through that son.⁷⁶ Again he says - "If among all the wives of one husband one have a son, Manu declares them all (to be) mothers of male children through that son."⁷⁷

This is the wideness of feeling Manu expresses through these verses and is very Indian and is of appreciable value. But now-a-days people of India are trying to forget their ancient cultural and spiritual heritage and adore the individualistic and materialistic values which are prevalent in materialistic world by Western countries. But they forget that though originally the inhabitants of India and that of Western countries originated from the same Aryan race but those who have come to the Eastern side have maintained a purity and tolerance of mind which the other branch which went to Western side completely lacked.⁷⁸

We must try to value our own ancient social values and purify and modify them with our growing scientific judgement which also opens up scope of better education and communication and take our country on the lead instead of admiring and copying the values of other countries which is quite different from our environment.

Manu has accepted 'strīdhana' which even in Rgvedic period was not so much in vogue as seen by Sri A.S. Altekar.⁷⁹

⁷⁶ Ibid IX 182

⁷⁷ Manusmṛti IX 183

⁷⁸ 'Hindu View of Life' by Dr. S. Radhakrishnan

⁷⁹ The position of women in Hindu civilization by Prof. A.S. Altekar.

Dr. R.M. Das is of view that very faint traces of 'Strīdhana' was in vogue in Rgvedic time.⁸⁰ (V.X.85.13.38) It seems it came into existence with the bride-price and the learned mind accepted it as 'Strīdhana'. Manu accepts the six types of Strīdhana. Those were "What was given before the nuptial fire, what was given as the bridal procession, what was given in token of love and what was bridal processing. What was given in token of love and what was received from her brother, mother or father. These are called the sixfold property of a woman."⁸¹

The settled property of a married woman incapable of alienation by her husband and is well-known to the Hindu under the name of Strīdhana. It is a remarkable thing that the institution seems to have developed among the Hindus at a period relatively much earlier than among the Romans. But instead of being matured and improved, as it was in Western Society, there is reason to think that in the East, under various influences which may partly be traced, it has gradually been reduced in dimension and importance for inferior to those which at one time belonged to it.

Manu has not mentioned "Satee System" which was not in vogue then.

Another important aspect in Manu is the acceptance of

80 Women on Manu and his seven commentators by Dr. R.M. Das.

81 Manusmṛti IX.194.

twelve sons. It shows Manu's sincerity in giving place to all the offsprings whether born legally or illegally. He says among the twelve sons of men, Manu sprung from the self-existent, enumerates six as kinsmen and heirs and six as not heirs but kinsmen. This is again his broadness of mind towards human attitude to look at such illegal sons.⁸²

"The legitimate son of the body, the son begotten on a wife, the son adopted, the son made, the son secretly born and the son cast off, are the six heirs and ~~kn~~ kinsmen."⁸³

"But the son of an unmarried damsel, the son received with the wife, the son brought, the son begotten on a remarried woman, the son self-given and the son of a Sūdra female are the six who are not heirs but kinsmen."⁸⁴

From the ethical point of view we can see that Manu has given importance to four puruṣārthas i.e. dharma, artha, kama and mokṣa. We can see at least our ancient law-giver has given importance to both the husband and wife the equal freedom to enjoy and follow the duties and purposes i.e. from the social, religious and spiritual point of view, which is very uncommon in other religions.

The essence and inner meaning of marriage which a chaste Hindu couple should feel can be easily understood by a verse which has sentimental value. "Whatever the

82 Ibid IX.158

83 Ibid IX.159

84 Ibid IX.160

qualities of the man with whom a woman is united according to the law, such qualities she assumes, like a river united with the ocean."⁸⁵

To Hindu philosophy a husband receives his wife from the Gods, he does not wed her according to his own will.⁸⁶ Whatever type of marriage it may be the couple has to try their utmost to adjust and make the family life a happy and contented one. Thus whatever metal they have got in them they should mould it accordingly. It is only destiny which is viewed as God who decides everything. In that case it is in the Hindu view of life to adjust utmost for the benefit of the society but as a last resort there are of course ways to remarry. This concept has validity even today.

So ~~Many~~ **Manu** is not only an ideal law-giver but a social organiser and philosopher combined in one person. To understand him fully one must go into the inner sentiment of the heart and spirit which is often ignored by the critics of Manu specially with reference to his views as women and marriage as an institution.

Manu as a law-giver and as a social organiser must have taken into account many aspects of marriages into consideration only for the sake of the welfare of the society, which is considered even today as a major aim of the law.

✓⁸⁵ Ibid IX 22
⁸⁶ Ibid IX 95

He made the law on the basis of social, political and religious background of the time. This is not to say that whatever Manu has given is acceptable to us today. For example, the negligence towards Sudras acceptance of Niyoga are not acceptable in our time.

Both these concepts as many others are out of date with modern way of production and emerging social values. Dominant forces in the modern society, today i.e. freedom of choice of profession, easier access to education, equality of races and sexes. Along with emergency of new values certain old values are no more dominant, such as preserving family lineage. A happy and contented life is no more based on begetting male child for sacrificial rites and to preserve the family lineage. But to have the healthy and happy family it is very important even in modern society.

A man becomes a perfect man who consists (of those persons united) his wife, himself and his offspring."⁸⁷

Manu's views of marriages definitely indicate his insight into social problems, but do not merely recognise individual happiness which is a modern concept.

So we find that Manu is not a mere man but an officer of society which lays rules and regulations to suit the sentiments and environment of ancient India. Its effect will be eternal if understood in proper perspective and modelled according to the change of society.

⁸⁷ Ibid IX 45.

From the above discussion on Manu's views on marriage and women, it makes it quite clear that Manu speaks rightly of a woman and at the same time he puts various checks and controls on them only with a view to protect them from undesirable elements so that they will not be exploited.

Manu's views on marriage are really unique in the social context. He condemns force in case of a marriage of a girl and in ~~equivocal~~ ^{such} terms. He also condemns ^{forced} a state of a girl in marriage. However, he seems to be little bit partial to men when he discusses property rights of women and widow remarriage. It is not expected of a social philosopher like Manu, he should have been humane and kinder to women whom he equates with goddesses.

CHAPTER III

PART III

M O T H E R

Mother has a special place in Hindu view of family life in particular, and society as a whole in general. It is rightly said in the Rāmāyana - "Jananī Janmabhūmīścha sargādapi garīyasī", - Janani and Janmabhūmi are the two revered things of life to which most reverence has been given in ancient Indian philosophy. Manu too opines the same.

He says, "the teacher (akārya) is ten times more reverable, than a sub-teacher (upādhāya), the father a hundred times more than the teacher but the mother a thousand times more than the father."¹

"In a perspective and comprehensive study of the urban Hindu family, Dr. Aileen Ross provides an interesting glimpse into this sensitive domain in her tabulation of the degrees with which effective intensity is felt. In a mixed sample of 157 she found that emotional attitudes of family members towards each other were rated as follows: mother-son 115, brother-sister 90, brother-brother 75, father-son 74 father-children 24, husband-wife 16, sister-sister 5."²

It goes to show how high and exalted position mother is held in an Indian family.

Mother is so much revered in Manu that she is described as the 'image of earth'.³ So due respect should be given by children to their mother.

Manu also accepts the prime importance of mother. That trouble (and pain) which the parents undergo on the birth of (their) children, cannot be compensated even in a hundred years.⁴ So that the wise man requests the mankind

¹ M.S. II 145

² The Speaking Tree - a study of Indian Culture and Society by Richard Lannoy. pps 102.

³ M.S. II 226

⁴ M.S. II 227

to adhere to them and to do what is agreeable to them.⁵

Superiority of motherhood over all other state of women is admitted all over the world and all the religions give her the most revered position in society. There is no country or race which does not recognise her sanctity and greatness.⁶

Evolution of motherhood :

Maternity evolves into motherhood. To motherhood we owe the birth of unselfishness, sympathy and love. In the primitive age men and women for the protection of their young ones made the first shelter. Elizabeth Sloan Chesser says 'she planted the seeds and gathered the harvest. She was the agriculturist, the architect, the inventor, the doctor, while man occupied himself with sport and war.'⁷

Origin of society may be traced to the need of protection of the child which was provided by the mother. Thus mother's nurtured instinct to provide protection to offsprings may be at the root of creation of a family. While mother was at child bearing or at child rearing stage father had to feed and protect the mother thus giving rise to the concept of family. It may be noted that family as we know it to be, exists only amongst the human race. This may have happened due to the fact that lower animals become

⁵ M.S. II 228

⁶ Women in Manu and his seven commentators by R.N. Das

⁷ Women, Marriage & Motherhood by Chesser Elizabeth Sloan.

mature much faster into adulthood than human beings. Further the humans have to learn to be humans, which takes a very long time. The prolonged childhood in humans thus necessitated development of a family; thereby a society in a later stage.

In gradual but slow course family came into existence and man became home-loving. Motherhood helped to create the family concept which became the building block for a society. Mother's love for the child induces men to protect and provide them with food and love. So the feeling of inter-dependency between man and women started. Role of parental love, in developing a psychologically balanced child, is recognised by modern psychology. At the root of parental love remains mother's instinct and father's relationship with mother. Thus the family-tie becomes important in developing a balanced child.

Matriarchal Society :

Mother was the ruler of the family in the beginning of civilisation. We find Matriarchal societies and Semitic cultures. Matriarchal society extended in ancient Egypt and Lucians. The traces of matriarchal family lineage is even seen in few backward tribes in India, U.S.A. and other countries. In Graco - Roman world we find existence of mother-right. In middle age status of motherhood

was degraded in Europe but in the age of chivalry with the emergence of romantic love both the sexes were given equal importance. But after the reformation again woman's position slowly started eroding. At the beginning of 19th century it was humanitarian age which helped in emancipation of women. Then at the end of 19th century few scholars and social workers started and proclaimed the importance of women and of their well-being. Education of women changed much and helped to elevate the status of women. So Elizabeth Slohan Chesster said, - "Intelligent and efficient motherhood is only possible through education."⁸

Then came the period of Industrialisation when both the sex found occupation in the factories to earn money. But the question is whether mother's proper place is at home or in the work-field to earn more money, has not been fully resolved. In industrial societies this contradiction is becoming acute and leading these societies towards a direction where motherhood is becoming an enigma. So much so that women in increasing numbers are avoiding child bearing and therefore in some countries population growth has become negative. The lure of free life encouraged in such societies are in fact leading these societies towards a racial suicide, while economic growth has to be maintained, it must be realised that such growth is for the benefit of mankind and that there would be no point in economic growth

⁸ Ibid page 16

with no people to enjoy it. With this background we can see how Manu expressed his high opinion on mother though Matriarchal family was not favoured by him. This is specially because from the Rigveda onwards. Patriarchal family was the basis of society in which the father was given importance. A son was highly valued and laws of inheritance were framed accordingly. This might have helped deterioration of the position of women in society but motherhood was extolled to skies.

Functions of mother :

Apart from biological importance, socially mother is the basis of racial progress. In E.S. Chessers word - 'Mother's work is not only to bear children, but by their work and influence to evolve, purify and beautify the higher nature of the race; to protect and uplift those of their sisters who have less opportunity for self-development, knowledge and efficiency. Living is not an end in itself. Our lives are valuable in proportion as they serve a useful purpose. A woman is not necessarily a more valuable unit in the state because she is a mother. Unless her children are of a certain standard of fitness or quality they were better unborn; and unless she manifests the true mother spirit in the rearing of her children she is unfit for motherhood. The unmarried and the childless woman can fulfil her

maternal function by the service she gives to the state. And every state has need of the "mother work" which woman alone can do. Passing off the "motherwork" to non-mothers is not desirable because "motherwork" without motherhood is not possible. Mother love which can only come from a mother to its offsprings cannot be substituted by a teacher or a nurse. Thus in developing good citizens importance of mothers role has to be given due place.⁹

The biological realities cannot be undermined, woman's primary function is to give birth and secondary function of developing children is a biological and psychological reality. No social organisation should tamper with it because it may lead to disastrous consequences for the society, such as that has happened in certain western societies.

'To be mothers were women created, and to be fathers men, religious rites, therefore are ordained in the Veda to be performed (by the husband) together with the wife.'¹⁰

The function of being a mother and a father is the basic function of a family, and therefore religious rites are to be performed by mother and father together. Right to religious functions ^{was} were the yardstick of status of a person, and according to this śloka mother gets equal importance as father.

⁹ Ibid

¹⁰ M.S. IX 96.

This most important task to which women are entitled to is an indication of the role of women. Manu says of women that not only the production of children but the nurturing of those born are their responsibility.¹¹ Women are mothers and they have to take the responsibility of a mother as they have to raise their children according to accepted social standards. Bringing up children as per socially accepted standards was considered as the duty of mother. Thus ancient scriptures recognised the most important role of mother in building the society. In this we can see our ancient wise men fore-saw the importance of mother to build a healthy nation. Father was the bread-earner, he had hardly the time and energy to look after the house. But instead if both of them started doing all the work without any diversion of work there will be chaos.

Mother's task as a Hindu women is very sublime as far as the development of the country as they have to rear the children according to an accepted standard. So true division of labour between mother and father as envisaged by Manu is praiseworthy because of its pragmatic approach which is in conformity with natural instincts inherent in the species. But if father and mother both concentrate only in earning their bread, development of children will not be according to the expectations of the society. Perhaps such children would

11 M.S. IX 27

post problems to society. Aimless persons become a burden to the society. Manu does not desire such situation.

Contentment is the basis of all sentiments which Hindu philosophers tried to explain as the basis of peace and prosperity. It is a very difficult concept to acquire in a society like ours where hierarchy has been the rootcause of all sorrows. State has to provide security otherwise individuals cannot expect to have contentment. Security has to be provided to mother within her motherhood through her "motherwork". But trying to do it away from or do away with "motherwork" through nurseries and schools may mean development of unnatural unbalanced children which may be disastrous to the society.

Parenthood is not a bed of roses. It is joyous as well as a painful process. But parents go through it willingly therefore Manu says - "That trouble and pain which the parents undergo of the birth of their children, cannot be compensated even in a hundred years."¹² "Obedience towards those three (teacher, father and mother) is declared to be the best form of auster^uity; let him not perform other meritorians^{ous} acts without their permission."¹³ "For they are declared to be the threeworlds, they the three (principal) orders, they the three vedas, and the three sacred fires."¹⁴

12 M.S. II 227

13 M.S. II 229

14 M.S. II 230

These verses show the high esteem in which "mother" was held by Manu in recognition of her role.

"He who neglects not those three (even after he has become) a house-holder will conquer the three worlds and, radiant in body like a god, he will enjoy bliss in heaven."¹⁵

We see relation between both mother and son are one of interdependence. Mother can become a goddess by serving her duties towards her son and vice-versa. Such is the coveted relation which our heritage aspired to build. 16

Much stress is given on the sons duty towards her mother, father and teacher as they are a persons real character - builder which helps him lead a healthy peaceful and contented life and thus makes a suitable basis for a cultured and civilised race.

Manu says that "all duties have been fulfilled by him who honours those three, but to him who honours them not, all rites remain fruitless."¹⁷ As long as these three live, so long let him not (independently) perform any other (meritorious acts); let him always serve them, rejoicing (to do what is) agreeable and beneficial (to them)¹⁸. He shall inform them everything that with their consent he may perform in thought, word or deed, for the sake of the next world".¹⁹

15 M.S. II 232

16 Thaiteriyā Upaniṣad

17 M.S. II 233 234

18 M.S. II 235

19 M.S. 236

Ref.

II

"मातृदेवो अयम्"

• Taittiriya -

So that to respect these three elders was considered to be the highest duty of every citizen.²⁰

To respect or to honour elders does not mean to obey them literally. Honour and respect follow deserving qualities. Without mutual understanding these feelings which Manu and ancient scripts prescribed are very difficult to realise. But due to historical reasons economic conditions of India were retarded, people became illiterate so that power-loving people (politicians) tried to mislead them. Common folk without proper education and in want of a food which is the basic need of living could not understand all the ideals or inner-meanings of these scriptures. But in Manu's slokas we find he has made rules and orders practicable for a worldly person while he says mother is revered as she is referred as 'the image of earth',²¹ "the mother the Dakṣiṇāgni"²², but he also says that "one should not sit in a lonely place with one's mother, sister or daughter, for the senses are powerful, and master even a learned man."²³

These slokas are not understood properly. These say it seems to be a vogue to criticize improperly. The development of children of today be they rich or poor, are not according to our satisfaction as due to economic unbalance, society does not have stability and immorality has taken its

20 M.S. II 237

21 M.S. II 226

22 M.S. II 231

23 M.S. II 215

deep root in the society, general degradation of morality in upper as well as lower classes have given rise to wrong values. These values are becoming accepted standards.

Such degradation of values in a country like ours which was built on many far reaching values in every aspect of life and which the ancient wise men have depicted in their literature or sayings, frustrated, the foundation of the cohesive forces of the society. Time has come to educate the mothers as mothers and not only as women. Womens education has become very necessary today. Mothers role to bring back a civilized culture with desirable values has to be appreciated. Once this fact is appreciated steps to educate the mothers can become a reality leading on to creation of a civilization with high moral values which in context decay of morality in all nations will be the contribution of India.

W I F E

"If anybody tells you that the Hindu ideal of wifely devotion is an imposition by a patriarchal society, a tyranny prompted by male jealousy, do not believe a word of it. It simply is not true. With us, paradoxical as it may sound, it was the women who stole the wind out of the sails of the men. They set up an ideal of faithfulness which not only made the noose and the sack unnecessary, but even the worth of the man of no consequence. Hindu women gloried in

the idea of satī (which is not the same thing as the Suttē of the English language) though the word is the same), and gave their love irrespective of the merits of the recipient, in which their defiant love partook of the quality of God's love in Christianity, which is given freely without any reference to the worth of man. We are often told by our Western friends that they just cannot understand our system of marriage. Most of us do not understand theirs either. In any case, countless millions have found happiness in our system, and it is not to be spoken of lightly."¹

Role of a wife or a husband can only be reviewed in terms of his or her family and the society. According to Manu two major purposes of a householder were (i) procreation (ii) performing religious rites. Thus the family relationship and all activities revolve around and are determined in these two major objectives. At the present time first objective remains still valid even though the second objective has lost its edge.

However human relationship could have been product more of task of procreation and up bringing of children rather than of religious rites. It of course should be recognised that performance of religious rites according to Dharma necessarily imposed certain restrictions and behaviour patterns

¹ A passage to England by Sri Nirod Chandra Chaudhury pps 128.

on the husband and thus influenced their relationship. Importance that Manu had given to procreation and performance of religious rites is expressed in a sloka.

"To be mothers were women created, and to be fathers men; religious rites, therefore, are ordained in the veda to be performed (by the husband) together with the wife."²

The relationship between husband and wife ^{arise} even before the marriage when the nuptial fee is paid. Nuptial fee is equivalent to purchasing a woman, thus in case a nuptial fee has been paid and the prospective husband dies ~~the~~ she may be married to his brother.³ But Manu is not in favour of this relationship and thus he says "Even a śūdra ought not to take a nuptial fee"⁴

On the other hand he says "The husband receives his wife from the gods"⁵ This stand taken by Manu shows how concerned he was about developing a desirable relationship between husband and wife.

Basis of a husband and wife relationship is ⁱⁿ observance of mutual fidelity and wishes that it may continue during their whole life and calls it the highest law for husband and wife.⁶

Thus this condition which is so important in a husband wife relationship and which pervades all times had been recognised

2 M.S. IX 96

3 M.S. IX 97

4 M.S. IX 98

5 M.S. IX 95

6 M.S. IX 101

by Manu and given its due place in his teaching. But he also recognised that effort is necessary to maintain the fidelity and advises the couple to constantly exert themselves that they may not isolate the fidelity.⁷

Even though Manu favours a relationship of "conjugal happiness"⁸ it is rather difficult to imagine how this could have been possible when marriage age prescribed by him was twelve for the girl when the man was thirty, and eight for the girl when the man was twenty-four years of age?⁹ Further the husband's age prescribed appears to be to allow his period of Brahmacharya and studies. Thus a well educated and matured person was to be married to a mere girl who had neither education nor maturity (neither physical nor mental). In such a condition the wife would naturally assume a secondary role to her husband.

The marriage age of the woman appears to be a result of preoccupation with fidelity and virginity. While men were restricted sexually by Brahmacharya women were given away at marriage early.

We may summarise from this that though the relationship desired by Manu appears on the face to be similar to the relationship desired in modern times they were in fact not equivalent.

7 M.S. IX 102

8 M.S. IX 103

9 M.S. IX 94

In this context a sloka of Manu may be illuminating -
 "Him to whom her father may give her, or her brother may give
 on her brothers' permission, she shall obey as long as he ~~lives~~
 lives, and when he is dead, she must not insult (his memory)¹⁰
 From this sloka and preceeding ones, it appears that though a
 partnership was advocated it was not an equal partnership.
 Wife's duty to obey and respect the husband in life and death
 is advocated time and again. Coupled to this is the fact of
 age difference between husband and wife along differences in
 educational status which leads me to make the above observation
 that husband and wife relationship in Manu's time was an
 unequal partnership.

The concept of obedience to the husband and
 subjugating to him finds repeated place in many context. Even
 if the husband have no virtue and "seeks pleasure elsewhere,"
 a faithful wife should always worship him.¹¹ A faithful wife
 should never do anything that may displease her husband even
 if he is not living¹². These concepts again are contradictory
 to concept of mutual fidelity.

The fidelity from a wife is expected even after the
 death of her husband because "A virtuous wife who after the
 death of her husband constantly remains chaste, reaches heaven,
 though she may have no son, just like chaste men"¹³. But

10 M.S. V 151

11 M.S. V 154

12 M.S. V 156

13 M.S. V 160

expectation from the husband is different in case where a very faithful and virtuous wife (as described in V 165) dies, the husband "Having Thus, at the funeral, given the sacred fires to the wife who dies before him, he may marry again, and again kindle (the fires)"¹⁴.

Major responsibilities of wives are "The production of children ⁺ nurture of those born"¹⁵, the due performance of religious rites, faithful service, highest conjugal happiness"¹⁶. Thus we see a wife's duty as prescribed by Manu differs little from that prevails in our time. In a well adjusted family in our time also the same duties are ascribed to wives. Thus there may have been very little difference between well adjusted families of then and now. Restriction placed by law and by moral teachings becomes relevant when adjustment fails. Thus we may not be over critical of legal provisions in favour of men as these are resorted to only in exceptional cases. Even when legal provisions are available in their favour how many women can really take advantage of these legal provisions! Lack of education and resources always come in the way of taking advantage of legal provisions.

Because of her responsibilities getting a good wife was very important. Specially because a wife is required for sacrificial rites and offsprings to continue these rites.

14 M.S. V 168

15 M.S. IX 27

16 M.S. IX 28

Mamu has laid down qualities of good wife quite explicitly.

- 1) "A twice born man shall marry wife of equal caste with auspicious (bodily) marks".¹⁷
- 2) She should not be a (a) Sapinda on mother side (b) belonging to the same family on the father's side.¹⁸
- 3) However rich family she may come from, following families should be avoided:¹⁹
 - (a) one which neglects the sacred rites
 - (b) one in which no male children (are born)
 - (c) one in which veda is not studied
 - (d) family in which members have thick hair on their bodies
 - (e) family which are subject to hemorrhoids
 - (f) -do- phthisis
 - (g) -do- weakness of digestion
 - (h) -do- epilepsy
 - (i) -do- white leprosy
 - (j) -do- black leprosy
- 4) The girl to be married should not have (a) reddish hair (b) redundant member (c) sickness (d) no hair (e) too much hair.

17 M.S. III 4

18 M.S. III 5

19 M.S. III 6,7,8

These qualifications prescribed of a wife-to-be, shows that they came largely out of genetic considerations. Following these rules would have helped to improve the racial quality. Even in modern times in United States many such restrictions are imposed on marriages to control disease which are genetic in nature as well as some diseases spread by germs.

It is necessary that such restrictions developed on scientific basis be applied. This would help greatly in a few generations to reduce many of the diseases and build a healthier race.

Wife's duties however was not only restricted to procreation and performance of religious rites. She was expected to be employed in the "collection and expenditure of his wealth, in keeping (everything) clean, in (the fulfilment of) religious duties, in the preparation of his food, and in looking after the household utensils"²⁰. This śloka is important because this the only place secular duties of a wife has been clearly mentioned and no doubt such duties must have occupied better part of her time.

One can imagine that to collect and spend wealth wife had to be sufficiently shrewd and capable, thus the image one gets from other slokas that wife was a person who was fragile, good only for procreation and religious ceremonies is contradicted. Thus an ideal wife emerges as a healthy person devoted to her husband, well versed in family affairs and its business and thus generally a worldly person.

DAUGHTER

Manu had recognised the importance of a daughter in a family. Manu was concerned with maintenance of the Aryan race and improving it. Due to women's role in procreation they find important role in "Manusmriti".

Man ^{and} women united in marriage become one. This united whole is the basis of creation and of growth. Thus men and women are equally important in any community.

By nature women are softer and of delicate constitution compared to men in all races. The hardness of men and softness of women are two qualities needed to balance families. Therefore the necessity of begetting both son and daughter has been recognised by Manu. Thus he says, "may our progeny increase"¹. Some of the commentators have taken progeny to mean son but there is no reason to so suppose. Because by sons alone the race cannot increase. In later times with lowering of status of women interpretations of this nature has crept in which has not helped to adequately appreciate Manu or his times.

Daughter being soft in nature and in physique are more vulnerable therefore they need more protection as compared to the sons. Thus Manu was much concerned about the safety of daughters and thus he wanted to assure protection to them. However, his concern about protection offered to the women has been misconstrued to mean supporting of possessiveness by men.

The attitude of Manu towards daughter is well expressed when he says "one's daughter as the highest object of tenderness; hence if one is offended by these, one must hear without resentment."² Again Manu advises a father not to have quarrels with his daughter³. Thus one can easily appreciate the beautiful position of affection that Manu awarded to the daughter.

1 M.S. III 259

2 M.S. IV 185

3 M.S. IV 180

However, daughter gets married and change her gotra i.e. belongs to another family. Thus she cannot be equal in all respects to the son. But if a man has no sons he can adopt a married daughter as his appointed daughter (Putrika) in which "such a daughter is equal to a son"⁴. Thus we see the exalted position that has been given to a daughter.

Even though in vedic times women got education almost like men. In later times, this practise has been abandoned. The reasons for this change has been discussed elsewhere in my thesis. The girls were married off early and went into the protection early. Thus Manu says, "The nuptial ceremony is stated to be the vedic sacrament for women (and to be equal to the initiation), serving the husband (equivalent to) the residence in (the house of the) teacher, and the household duties (the) same as the (daily) worship of the sacred fire."⁵ Because of this concept much importance has been given by Manu on suitable marriage of the daughters.

"Reprehensible is the father who gives not (his daughter in marriage) at the proper time."⁶ 'Proper' time has been shown in the chapter on marriage to be between age of 8 to age of 12. However Manu also says that the daughter should be given in marriage "to a distinguished handsome suitor (of) equal (caste)."⁷ Again he says (but) the maiden though marriagable should rather stop in (the fathers) house until

4 M.S. IX 130

5 M.S. II 67

6 M.S. IX 4

7 M.S. IX 88

death, than that he should even give her to a man destitute of good qualities".⁸ Thus we see father's responsibility towards his daughter is clearly defined and expect the question of age of marriage. The concept is very close to what any modern father's concept of his duties towards his daughter. The caste of the bridegroom denoted equivalence in social status and it will be humane even for a modern father to marry his daughter in the social class he belongs.

However if a father fails to arrange a match for his daughter, Manu says, "Three years let a damsel wait, though she be marriageable; but after that time let her choose for herself a bridegroom (of) equal (caste and rank)".⁹ Thus the daughter's right to marry if the father fails to arrange a match is recognised in this sloka and no guilt is attached to marriages if the girl chooses a husband for herself.¹⁰

From the above discussion we may see that daughter had been given a reasonable position in her father's household. Her position was one of affection and love. After all she left the father's house between the age of 8 and 12. The affection that she received can be imagined when Manu says, "She should have a name possessing "a plain meaning, be pleasing and auspicious and in long vowels, and contain a word of benediction."¹¹

8 M.S. IX 89
 9 M.S. IX 90
 10 M.S. IX 91
 11 M.S. II 33.

CHAPTER IV

KINGSHIP IN MANUSMRITI

Monarchy was the generally prevalent system of governance all over the world as it was in the Vedic age in ancient India. How people living in simple societies with natural adjustments amongst themselves slowly came under sovereignty of the kingship makes a very interesting though speculative study.

In the beginning of the evolution of the human society there were no laws. People had their morality and natural justice with the aid of which they lived their happy and peaceful life in the distant past when first societies came into existence. The people in many parts of the world had experienced such golden ages.

In the Mahābhārata Śāntiparva we find the description of such an age when people had a happy and peaceful life. Even Plato's Republic can be considered as a golden age of the same kind. Marx's expounding of primitive communism also points to simple societies living without strife.

In the east or in the West and according to all religious beliefs whether Hindu, Christian, Islam, Buddhism or Jainism it seems that in the beginning of history there was a golden age. But due to anarchy in later ages according to these religions, one person was elected to look after the law and order of the community. This elected person was revered as God or Saint; because he established peace in the society.

Increase in production, creation of property and property rights, division of labour, territorial jurisdiction are some of the factors which made the societies complex. A common code became necessary to maintain order in the society. Later, natural laws proved inadequate and

the state of anarchy prevailed and thus security of the society was disturbed. "To establish an order in the society people needed a person responsible for looking after their peace and security. In return for his services the people shared some part of their income to the king as a homage for their gratitude."² From this anarchial beginning law and kingship was born.

We do not have any clear knowledge of constitutional contract between the people and the king, though both the parties could act according to their will as long as neither of them deviated from their moral codes.

In the primitive states of the human society, there was peace and happiness, then societies became more and more complex as the time went by. The problems of the society and of social relations became more and more complex. Rise of private property and rights over women created frequent discord in communities.

"Social rules and customs and behaviour were very simple. In the absence of personal property in the society, there was no prevalence of stealing. Individuals of the society, in their bone and marrow, belong to the community. It was not possible for them to do anything antisocial. Even now in backward communities we do not see prevalence

2 Altekar A.S. - State and Government in Ancient India - Chapter II pps. 30

of speaking of untruth because speaking of untruth is related to civilization or in other words related to private property which is an integral part of civilization." (My translation from Bengali book "Mānav-Samāj")^{2a}.

In the absence of a code of law and Government anarchy and jungle law became the rule. To avert this chaos, a social code developed which became a contract between the society and individuals. Whoever was guilty of unsocial acts like misappropriation or adultery were to be expelled from the society. But it became difficult to administer such contracts in the absence of an authority. Authority was needed for administration of justice. To fill the vacuum, 'king' came into being. Manu says similarly - "When these creatures being without a king, through fear dispersed in all directions, the lord, created a king for the protection of this whole creation."³

There may have been another reason for development of kingship. In the olden times people were awed by the powers of nature. The storm, the rain, the sun, the great sources of power became associated with gods. The priests, the magicians who claimed power to modify furies of nature, naturally assumed leadership of the people. From this leadership may have arisen kingship clothed in devine grace

2a 'Mānav-Samāj' by Rāhul Sankrityāyan. pps. 33

3 Manusmriti - Chapter VII sloka 3.

and powers. As we find in Manusmriti king's power is compared with that of "Sun", "Fire" and "Wind", "Moon", Kubera "Varuna" and "Indra". Thus the king is embodied with different types of personalities represented by different dieties.⁴

✓ But there is another probability that the 'kingship' developed from the patriarchal joint families. In ancient ages Indo-European communities were patriarchal in nature. The eldest person in the family had the supreme power to look after the welfare of the whole family which were joint or extended families. He was looked at with great reverences and most probably he enjoyed powers similar to that of a king which he exercised in consultation with the elders of the community. The power of the patriarch gradually began to increase as the extended family made up a village and a village virtually became a state. Thus the institutions of joint family may have been at the origin of kingship. Patriarchs wielded great influence because of their position in the family and guarded the family, its property and its honour. Ancient villages often sprang from a single family. Thus the patriarch was looked upon as the natural leader of the village. Kingship inherited this quality and thus subjects were looked upon as sons and daughters of the king.

4 Manusmriti - Chapter VII Sloka 7 .

Rājadharmā, kingship and State

State in modern times may be equated to ancient Rājadharmā. State is a nation or an organised community with a government recognised by the people.⁵ Conception of a state is linked to the concept of nation and instruments of governing. Government is thus internally linked to the concept of a state. We have discussed 'dharma' in chapter two. State was embodied in the person of the Rājan who had to uphold or secure dharma. Thus the concept of state and Rājadharmā were originally linked. Even in Modern concept of State, the State, the Govt., and the law are intermingled in an inseparable organic linkage.

Government means system of governing or body of persons governing a state as an agent or administration or ministry.⁶ Thus we see that many different meanings may be attached to the word "Government". Similarly the word state has different meanings in different countries. Many of these were embodied in the Rājā or the king. Thus we may equate Rājadharmā with the concept of state.

Both Kullūka and Medhātithi use the word 'rājan' which was used in a general sense to mean a coronated ruler

5. Such definitions are found in standard dictionaries and Encyclopædia of Social Sciences.

6. — do —

irrespective of his particular caste.⁷ Therefore, Rājadharmā is not the dharma of a particular caste but of a ruler and his government.

In the modern context state can be equated to kingship, "rājadharmā" i.e. to the conception of the government, as government is the executive body which governs a community, as the king did in ancient times.

Government means system of governing or a body of persons governing a state. A state is an agent of the nation to govern the state. On the other hand state is a nation or an organised community with a government, recognised by the people. Thus all ideas that are applicable to ancient kingship are applicable to modern concept of state.

Manusmṛiti was as if the unwritten constitution of the government in ancient India i.e. in a contract between the king and the people based on Dharma, so that the state could function well. Laws and discipline laid down in Manusmṛiti were binding on both the king and the people.

Kingship as an institution was accepted by the society because of the fact that kingship was meant for the welfare of the state. Though Autocracy was the basis of Kingship, kings had to be benevolent kings and be guided

⁷ Kullūka and Medhātithi on Manusmṛiti VII.- 1.

by "dharma". In fact the essence of Rajadharma gives the flavour that the kingship was an office with hard duties attached to it. Powers were controlled by responsibility. Observance of Dharma was a merit. (vii 44). The highest duty of a Kshatriya is to protect his subjects for the king who enjoys the rewards, just mentioned, is bound to discharge that duty.⁸

Even we find in Kālidāsa's Raghuvamśam, the same opinion is referred.⁹

That is why a king could not act according to his own wishes or even guided by his selfish motives. It was always believed that kings were not to act according to his whim, "^{na nrpaḥ} ~~raja~~ ^{na} ~~raja~~ ^{na} kamavṛttayah"¹⁰. Subjects were protected by the rule of Dharma which was binding on the king as well as on the subjects. Thus Dharma was supreme and not the king. So long as both the parties acted according to Dharma, strifes and struggles were avoided.

Manusmṛiti emphasises on the desirable characteristics of a king necessary for the welfare of the state. Manu speaks of king's personal life, which could be guided by personal life, which could be guided by personal choice but enjoying his personal life could not be the sole aim of his life. A king's personal life was linked with his

8 Manusmṛiti - Chapter VII - śloka 144

9 Raghuvamśam by Kālidāsa - XIV - śloka 67

10 V. Rāmāyana IVth book 17-15

public life and had to be intermingled in such a manner that it could bring about the welfare of the state.

According to Kautilya king may do anything in the matter of foreign policy but his chief aim should be the welfare of the state. According to him welfare of the state is the welfare of the king but not vice-versa.^{10a} Whatever is pleasant to the subjects should be pleasant to the king not vice-versa. This was not only an ideal concept but a practical guide. An ancient king was given training in Rājadharmā and this was the social philosophy of Manuism with regard to the kingship as an institution in his own time propagated. It is a matter of pity that these basic principles of governing are neglected and misunderstood and stamped as old ones. Those who rule do not have any concept of Rājadharmā. Thus the result is that Rājadharmā has become "enjoying power" leaving aside the concept of service which was so wisely propagated by Manu and others.

In Manu "Rājadharmā" meant the institution of the kingship and its laws governing it. According to 'Kullūka' the word 'dharma' stands for all works having both seen and unseen results (dr̥stārtha and adr̥stārtha) in as much as the six kinds of royal policy come within the perview of ~~dharma~~.

10a Arthasāstra - I - 19

Medhatithi refers to "dharma" to mean "duties". Manu emphasised more on seen duties though both seen and unseen duties had to be performed.

Manu about a thousand years back, understands the necessity of forming a constitution so that the fundamental principles of political association, authority of the sovereign, the conditions under which popular obedience would be expected, the transfer of power by the people to the sovereign is irrevocable or otherwise etc. were clearly stated. But according to Dr. A.S. Altekar - "ancient Indian writers did not live in an age of nationalism like Locke and Rousseau, they looked at the question from a semi-religious and semi-sociological point of view. They have therefore, neither gone deep into the fundamentals of the problem, nor defined precisely the limits of powers of the state and of the people. They observe, for instance that people offer obedience and taxation in return for the protection and services they expect from the government. If the king's government fails in its duty, they permit the people to remove the king, and even to kill him.¹² He also says that thus the ultimate sovereignty of the people and their supreme authority is assumed. This view is supported by Dr. Radhakumud Mukherjee when he says - "The king was no autocrat. He had to rule by right and morality. A wicked king was deposed. A king injuring his

12 Altekar A.S. - State and Government in Ancient India chapter II - page 33.

12a Hindu Civilization - Part I by Radhakumud Mukherjee, pp 169

people was killed "like a mad dog. A defective king must lose his throne."^{12a} This remedy however, is drastic

and difficult, it would have been more useful if our authorities had recommended everyday constitutional checks.

We should not however forget that such remedies have been developed even in the West only ⁱⁿ the modern age.^{12b}

Further these checks have become possible due to the rise of counter powers of industry and commerce which can efficiently control government in the West. Thus the checks on the government ^{are} is not only a function of constitutional clarity but of counter vailing powers. Manu has also advised that a king should take people of high rank as his ministers.¹³ We may assume that people of high rank had their own social and economic powers. Thus monarchy may have been in effect an oligarchy which may have been sufficient check on autocratic behaviour of king.

Even though the king had the supreme power and authority he had to contend with force existing in the society. For instance he was required to worship the Brahmins who had much influence on the society.¹⁴ and that was the order of the day. He was also required to consult his councillors who were drawn from upper classes of the society, and thus from amongst those who had influence on the society.¹⁵ Violation of the Dharma by a king was

12a Hindu Civilization Part I by Radhakumud Mukherjee, pp 169

12b Altekar A.S. - State & Govt. in Ancient India, Chap. II

13 Manusmriti - Chap. VII sloka 54

14 Manusmriti - Chap VII sloka 82

15 Manusmriti - Chap. VII sloka 54 & 57.

regarded as immoral because it was also a violation of social objection. Thus though the king held the supreme power he was kept in check by counter-vailing powers as well as by a moral binding. As Dr. Basham says - "Despite the growth of royal pretensions through the centuries the claims of the king did not go unchallenged, and in practice his divinity often made little difference to the body politic."^{15a}

The kingship was an elected position in the beginning and in many states the system continued for a long time. However, by the time of Manu it became a hereditary office. As a result of which the power of the king increased far beyond power originally given to the office.

We find gradually the power of the king becoming more and more and his kingdom became longer and longer. King was believed to have divine powers and grace. Many institutions were regarded as having divine origin in ancient India so was the kingship. It seems Manu has taken the idea of the origin of kingship from the Aitareya Brāhmaṇa."^{15b} It asserts that the Devas worshippers, viz. the aryaṇas originally had no king. In their struggle against asuras when the devas found that they were repeatedly defeated, they came to the conclusion that it was because the Asuras had a king to lead them so that they

^{15a} The wonder that was India by A.L. Basham. pps 86.

^{15b} Aitareya Brā - I-14-152 VIII-12-14.

were successful. Therefore, the Devas decided to try the same idea, and they agreed to elect a king.¹⁶

In conformity with the scientific theory of contract the king was elected either on certain conditions or on a contract. We find the same resemblance of some concepts in Vedic hymns and songs of royal election.

Even though divine origin of the king has been referred to frequently there is often no substance to it. Because it is seen that the king had to take an oath on the occasion of this coronation Ceremony which was like a contract that he will look after the ruled. If the divine origin was really accepted there would be no point in a coronation or taking an oath.

The kingship became hereditary in later times but when a failure of laws occurred in the royal house the Indians elected their sovereign on the principle of merit. We can see the examples of election of Gopāla-750 A.D., Rudradādamana etc. 130A.D. Even in Jātakas and in fables we find mentions of elected kings. In fact even a hereditary king had to be coronated may mean that originally kings were elected and by taking oath at coronation he had to accept the moral code laid down for him which was acceptance of the social contract with the subjects.

16 Aitareya Br. I-14..

People irrespective of religion, creed or culture whether they were Hindus, Christians or Muslims, tried to ascribe the greatness of the king, to the divine origin. After all divinity is a man made thing. Man ascribed divinity to all that is powerful and that which appears to be supernatural. Thus the kingship was an ideal, to which divinity was attributed. It was not easy for a common man to protect the law and order as he is easy victim of natural tendencies i.e. greed, love of pleasure, urge of the senses, etc. but a king had to be an ideal man who had to overcome all of these natural tendencies. He had to therefore acquire supernatural powers by controlling his senses and become an ideal man, as if an incarnation of God. Manu finds it is very difficult to keep peace and order for a king without divine attributes. It is human nature to make a Guru or a master and follow him. Kingship took the advantage of this custom and with the help of code of laws brought peaceful atmosphere, i.e. he provided security where it was lacking so that people could live happily and at the same time claimed divinity. Thus on the one hand divinity was attributed to the king on the other hand it was appropriated by the king.

We find Manu saying "When the people of this world being without a king through fear dispersed in all directions, the Lord created a king for the protection of this whole creation.¹⁷ Thus the "protection" was the main

¹⁷ Manusmriti - chapter VII sloka 3

duty of king. Medhātithi confirms this view when he says that - protection be given to the distressed one (His comments on Manu VII-2). Even in Mahābhārata (śāntiparva) we find that all the seven expounders of polity extol "protection", as the highest "dharma", of the king. Manu also describes "protection" of subjects as the highest dharma.¹⁸ Kālidāsa, Gautama, Vasistha, Nārada and Śukraniti describe that protection is the main task of the king.

So we see protection was the basic necessity for the election of a king. When the power of divinity was ascribed just to make him responsible for fulfilling this lofty purpose. The creator took extracts from the eternal particles of Indra, of the wind, of Yama, of the Sun, of fire, of Varuṇa, of the Moon, and of the Lord of Wealth and made the king.¹⁹ The Supernatural power is associated to the king to make him most important among all men. He is 'Sarvatejomaya', i.e. repository of all powers.²⁰ (~~institutes~~)

The king embodies in himself many qualities similar to those embodied in the concept of various deities. Thus the king has been compared to various deities and an ideal king is supposed to embody all the powers and the qualities of deities which he needs to fulfil his duty.

18 Manusmriti - chapter VII śloka 144

19 Manusmriti - chapter VII śloka 4

20 Manusmriti - chapter VII śloka 11

1) Let the king emulate the energetic action of Indra, of the Sun, of the Wind, of Yama, of Varuna, of the Moon, of Fire and of the Earth.²¹

2) As Indra sends copious rain during the four months of the raining season, even so let the king, taking upon himself the office of Indra, shower benefits on his kingdom.²²

3) As the Sun during eight months (imperceptibly) draws up the water with his rays, even so let him gradually draw his taxes from his kingdom; for that is the office in which he resembles the sun.²³

4) As the Wind moves (everywhere) entering (in the shape of the Vital air) all created beings, even so let him penetrate (everywhere) through his spies, that is the office in which he resembles, the wind.²⁴

5) As Yama at the appointed time subjects to his rule both friend and foes, even so all subjects must be controlled by the king; that is the office in which he resembles Yama.²⁵

6) As (a sinner) is seen bound with ropes by Varuna, even so let him punish the wicked, i.e. his office in which he resembles Varuna.²⁶

21	Manusmriti -	chapter IX	303
22	-do-	chapter IX	304
23	-do-	chapter IX	305
24	-do-	chapter IX	306
25	-do-	chapter IX	307
26	-do-	chapter IX	308

7) He is a king, taking upon himself the office of the Moon, whose (appearance) his subjects (great with great joy) as men feel on seeing the full moon.²⁷

8) (If) he is ardent in wrath against criminals and endowed with brilliant energy, and destroys wicked vassals, then his character is said (to resemble) that of Fire.²⁸

Thus Manu describes the king assumes powers of great deities in his human incarnation. "Mahati devatā esa"²⁹. Supernatural power is ascribed on him and he has to bear many responsibilities.

The characteristics of the king described here ~~is~~ *are* true for all rulers of all times whether they are elected in a democracy or are hereditary kings in autocracies. Even senior civil servants were expected to possess these characteristics. The power that rests with the rulers had to be justified by their competence and leadership qualities. The qualities and requirements of a good leader specified by Manu should guide our present day leaders of the government, in the absence of these qualities a good government cannot function well. Lack of these qualities amongst beaurocrats and legislators in modern times has become so conspicuous that general sense of disbelief and cynisism towards the government has spread amongst the masses. Therefore all

27 Manusmriti - chapter IX 309

28 -do- chapter IX 310

29 -do- chapter VII sloka 8

around violation of the law has become ^{the} order of the time. Leaders of the nation must pay urgent attention to this aspect. After all only when rulers and the ruled act according to an accepted code of conduct that the society can remain peaceful, government can govern and culture flourish.

We have discussed earlier that the king's main function was giving protection. But what did he protect? Protecting the subjects from foreign invaders or from neighbouring states would have been a major function. But an equally important function was protecting the "Dharma" ✓ or the laws.

The order of ancient Hindu society was based on Dharma. King was the upholder of "dharma". Therefore much stress was laid on the moral character of the king. He was expected to be the ideal man in the country possessing many qualities otherwise he would not be able to maintain his authority and respect the law and order for which he was instituted. As prescribed by Beniprasad in his book - "Theory of Government in ancient India" - "The enforcement of law as of the social order is part of the protections for which the kingship was instituted. Manu proclaims that "the king has been created (to be) the protector of the castes (Varna) and orders, who, all according to their rank, discharge their several duties.³⁰ Varna at that time was the basis of "Dharma" as each Varna had its own Dharma.

³⁰ Manusmriti - chapter VII sloka 35

Manu says that the king must have command on his own senses. Day and night he must strenuously exert himself to conquer his senses; for he (alone) who has conquered his own senses, can keep his subjects in obedience.³¹ He must be self controlled person.³² He must be modest.³³ He should be vigilant in every aspect of life but should not care for his own pleasure.³⁴ We find the same concept in Markandeya Purāna - "The body of the king is not meant for enjoyment of pleasures, he has to put up with great trouble and worries while carrying out royal duty of protecting the subjects and fulfilling dharma."³⁵ He must never get angry unnecessarily. Otherwise all ill effects will be showered on him. He should respect aged Brahmins who were well versed in Vedas.³⁶ The welfare and peace of the country depend on the king himself. We find in Rgveda also that if the king governs with justice welfare of the people is certain."³⁷ The South Indian work Manimekhalai VII-5-8-12 says that if the king did ^{swerve} survives from his righteous path nothing on earth would survive.^{37a}

For a king who is attached to the Vices springing from love of pleasures looses his wealth and his virtues out (he who is given) to those rising from anger (looses) even his life as observed by Manu.³⁸

31 Manusmriti - chapter VII sloka 44

32 -do- -do- sloka 52

33 -do- -do- sloka 39

34 -do- -do- sloka 45

35 Markandeya Purāna - p.130-33

36 In Manusmriti VII 37

37 Rgveda - V-10

37a Quoted by Altekar Chapter V page 96

38 In Manusmriti VII 46.

Amongst our present day rulers this point is being sadly neglected. While criticising the life style of our present day rulers Acharya J.B. Kripalani in a recent article said, "it encourages habits of conspicuous consumption among the affluent classes and creates contrasts which are falling to the people and generates jealousies and heart burning."³⁹

Dharma was adhered to for the benefit of the society not only by the ruled but also by the rulers. Dharma is a binding force for the ruled and rulers. In Dharma the personal duties of the king were given much importance as seen before. There are two aspects to the observance of the Dharma by the king. Firstly it ensures the subjects of their rights and privileges and secondly an atmosphere of model behaviour is created. Thus observance of Dharma by the king promotes observance of Dharma by the people.

The king had very busy days. Many say that having risen in the last watch of the night, having performed the rites of personal purification, having with a collected mind, offered ablutions in the fire, and having worshipped Brāhmans, he shall enter the hall of audience which must possess the marks (considered) auspicious (for a dwelling)⁴⁰. Tarrying there, he shall gratify all subjects who come to see him by a kind reception and afterwards dismiss them;

39 Kripalani J.B. (Article - The old and the new - Indian Express May 6th 1978).

40 In Manusmriti - chapter VII 145.

having dismissed his subjects he shall take council with his ministers.⁴¹ He should consult with them in a lonely place so that the secret of their talk is not disturbed.⁴² But at midday or at midnight when his mental and bodily fatigues are over, let him deliberate, either with himself or with his ministers on matters relating to virtue pleasure and wealth.⁴³ Thus we see that the king was not only a busy person but also a manager of affairs. He was required to consult and contemplate before action.

For the successful internal administration the king has to take the advice of seven to eight ministers who are royal servants and descendants of noble families who are versed in the sciences, who are heroes, skilled in weapons and who are well tried personalities.⁴⁴ With these ministers he should discuss about the peace and war, about the army, the treasury, the town and the kingdom, about revenue about law to protect himself and his kingdom and about the sanctification or his gains by his pious gifts.⁴⁵ He must consult them individually, then collectively and afterwards he should think himself as what is beneficial to himself in his affairs.⁴⁶ The qualifications of ministers as mentioned above are so prescribed to enable the kings to

41 In Manusmriti - chapter VII 146
 42 -do- chapter VII 147
 43 -do- chapter VII 151
 44 -do- chapter VII 54
 45 -do- chapter VII 56
 46 -do- chapter VII 57

appoint any good worthy and efficient persons. This is to be borne in mind even in a democratic set up of the Govt. if the administration is to be run effectively for the welfare of the state.

Each minister should be entrusted with his office and he should act after consulting him.⁴⁷ For this purpose alone he should appoint officials as many as necessary but those men must be brave, skillful, high born, and honest in collection of revenue in mines, manufactures, store house, but be timid in the interior of his palace.⁴⁸

In the department of foreign policy everything was entrusted on a person who was designated as ambassador. He should be versed in all sciences, understand hints, expression of the face and gesture should be honest, skillful and of noble family.⁴⁹ He should be loyal, possessing good memory, fearless and eloquent, handsome and who knows proper plane and time fraction.⁵⁰ In modern times, if such qualifications are prescribed, no one should find fault with this policy to appoint Rājadūtas.

The relation with the foreign countries are his responsibilities so that peace and war of the state are dependant on him only. As Manu says - the army depends on

47 In Manusmriti - chapter VII 59
 48 -do- chapter VII 62
 49 -do- chapter VII 63
 50 -do- chapter VII 64



the official (placed in charge of it) the due control (of the subjects) on the army, the treasury and the (government), the realm on the king, peace and its opposite (war) on the ambassador.⁵¹ It is through his efficient efforts that avoidable war can be averted and lasting peace can be secured. When two or more countries are involved in the successful mediation, an ambassador may avoid the catastrophe. On the other hand due to the incompetence of an ambassador that peaceful countries may get involved in war. Even today we find the ambassadors are serving the same purpose what Manu said long back, and personal qualities required of an ambassador today is hardly any different from that of the ambassadors of Manu's time.

For the security and welfare of the state the king should be vigilant. He should think much about choosing the site of the country and its capital should be on a fort most preferably situated on a hill.⁵² The purpose seems to be that such place was ^{not} vulnerable and a king could be safe therein. Today this is out-dated in view of industrialisation and atomic age.

Manu reminds of the relation of a king towards his subjects as that of a father and son. He is the father of all men.⁵³ Prosperity of the country depends on loyal application of method in imposition and collection of

51 In Manusmriti - chapter VII 65

52 -do- chapter VII 71

53 -do- chapter VII sloka 80

revenue. He should not impose taxes only but should be guided by the decisions of the Śāstras.⁵⁴ On revenue only the prosperity of a country depends. So that the imposition and collection of taxes must be done carefully with the aid of efficient and trust worthy officials.⁵⁵

- If these officials are not highly qualified persons and of the rank of ministers they will fail to discharge the duties with which they will be entrusted. There will be no fraud of public fund and this was the guiding principle in Manu's age.

In modern context we see there is indiscipline and immorality in the government and in the people. For this reason country as a whole is suffering. We can see Manu's observation is worthy of appreciation even today. The imposition, collection and payment of the revenues should be done in the spirit of duty on the part of the government as well as on the part of the people, otherwise the whole social system gets disorganised. These responsibilities should be given to worthy persons who should be very competent persons and must be above suspicion. These persons must not be lenient nor severely rude. A father - son relation between the rulers and the ruled is applicable in this sense even today for the welfare and prosperity of our country.

54 In Manusmriti - chapter VII sloka 80

55 -do- chapter VII sloka 62

Reward and reprimand systems holds up the order in a society. Therefore reprimanding correctly is of great value. If punishment is properly inflicted after due consideration it makes all people happy but inflicted without consideration, it destroys everything.⁵⁶ If the king did not inflict punishment on those worthy to be punished, the stronger would roast the weak like fish on a pike.⁵⁷ Such anarchy should not prevail and that is why there is the absolute necessity of the state and government. Manu like Kautilya gives more importance on Danda identified with Dharma for the protection of all (VII-14-18)-

Thus we see Manu saw the necessity of maintaining strict discipline by administration of justice, and inflicting of punishment for the protection of the righteous and the weak. He also advises that punishment must be given after due consideration and without pride and prejudice or greed and lust.

Manu says that "let him (the king) honour these Brāhmins who have returned from their teachers house for that (money) which is given to Brāhmins is declared to be an imperishable treasure for kings."⁵⁸ In todays contexts scientists working for the nation may be termed as Brāhmins who should be guarded and maintained well in the

56 In Manusmriti - chapter VII śloka 19
 57 -do- chapter VII śloka 20
 58 -do- chapter VII śloka 82

interest of nation.

Here also king has to be aware of the welfare of state. Brāhmanas were the custodians of culture and discipline. They were the persons who were entrusted with the duty of imparting education and spreading culture among the different sections of people. King would thus make arrangements to honour them. By honouring them the king only pays his respect to the culture of the land which is passed on by the teacher to his disciples. It is a gross dereliction of duty on king's part if he is not conscious of the value and importance of intellectual and cultural pursuits of these people and does not recognise the ^{worth} ~~worth~~ and the status of those who dedicate their life to education. This is one of the functions of the state and it was upheld in the past and is upheld today.

Manu again says that a king must not levy taxes on śrotriyas.⁵⁹ To honour an intellectual is our heritage. We should try to cherish this heritage even now as material gains can be destroyed or lost but knowledge can never be lost or destroyed. Hence it should be cherished and cultivated in proper perspective even today as Manu opined a thousand years back. Society may have changed its values and goals but respecting intellectuals

59 ■ In Manusmriti - chapter VII śloka 133.

is respecting what is imperishable. Therefore, Prof. Ashoka Nath Sastri says that "A better and more dignified attribute to scholarship and culture is inconceivable."⁶⁰

In this age we see that material comforts and gains have come in modern life as our aim and ideal. So that all the pursuits in a society are money - oriented, so that education does not get its priority as it used to get in ancient India.

That is a reason why our society is passing through a stage in civilization which is not conducive to the growth of our culture. Even modern thinkers like Schumacher E.F. say that development does not start with goods; it starts with people and their education; organisation and discipline.⁶¹

We may accept that knowledge has much more value than money in a culture like ours. Therefore the whole social system should be judged on the basis of knowledge. In modern society education should get priority and therefore respect. In social reforms the best results can be attained by going to the sources, instead of dealing merely with the effect, of wrongs done and of sufferings. There should come new ideas and actions so that educated have the opportunity and would disseminate their education. It is only then progress in our society

⁶⁰ Shastri Asokanath - Manusmriti chapter VII

⁶¹ Schumacher E.F. - Small is beautiful pps 157

is possible.

We have seen that relation between the ruler and the ruled were spelt out in details along with qualities, which were required of a ruler to maintain the relationship. In the modern context much of this remains valid in essence. It is futile to expect that laws alone can run a state. The personal qualities of the leaders, consciousness of the leaders and the subjects for performing their duties are perhaps more important than laws. Manu's laws had a moral connotation which unfortunately our present laws do not have. Thus we are moving towards a law bound society rather than a society which lives on its moral values.

It is therefore necessary to have wide discussions on the aspects of Rājadharmā which are applicable to the modern society so that present and future generation of leaders in the country as well as other countries may imbibe the magnificent values, qualities and duties prescribed by Manu for running efficiently not only a country but the world. Manu's code of Rājadharmā is meant for the world government so that threat of global war will not arise. People of the world will live in peace and prosperity and that is the ideal as envisaged by Manu and others in the past and R. Tagore and Radhakrishnan and of modern times who advocated one world and one government.

From the above discussion, it is abundantly clear that Manu as a social philosopher could not neglect the science of politics and as such he has embodied it in the name of Rājadharmā in his work. He strongly believed in the divine origin of the king and also divine origin of Danda - Force in the science of politics. Even today, inspite of education and culture force of Danda is accepted by the political thinkers as one of the means to govern rightly for the welfare of the state and accordingly provisions have been made in the constitutions of countries so as to give legal and political sanction to Danda.

Manu's views on king, his foreign policy, hereditary order, capital place are completely out dated and have absolutely no relevance to the modern world since the concept of king itself has been long dead since the emergence of the concept of democracy and socialism in the world at large.

At the same time his views on social welfare of the state though in a limited sphere are quite noteworthy. When there were no written constitutions to govern the people, Manusmriti must have served the purpose of constitution in a narrower sense in the past whenever there were conflicts between the king and Dharma. Manu advocated Dharma devotedly to be followed in letter and spirit by the

king and people alike. However it must be said that Manu's aim was not to enunciate political theory, but political life was a part of Dharma and as such from that point of view, he advocated his political philosophy based on the firm foundation of Dharma, which constituted the soul of society of that age.

संक्षेप अध्याय

न्याय :-

- ।क। विवाद पद**
- ।ख। विवादों के भेद**
- ।ग। विवाद पदों के निर्धारण में साक्षी का उपयोग**
- ।घ। निर्णय**

सप्तम अध्याय

न्याय

॥७७॥

मानव धर्मशास्त्रों में न्याय का भी निरूपण किया गया है ।

निष्पक्ष न्याय करना और जो व्यक्ति अपराधी सिद्ध हो जाए उसे दण्डित करना राजा के प्रधान कर्तव्यों में से था । पाण्डुरङ्ग, वासन काणे ने भी मनुस्मृति के इस सिद्धान्त को अपयुक्त सिद्ध किया है ।¹¹¹

न्याय करते समय राजा को अपराधी और निरपराध की पहचान उनके मनोगत भावों को देख कर करनी चाहिए । आकारों से, आँखों और मुँह के हाव-भावों से मनुष्य के मन के अन्दर की बातों को ज्ञान हो जाता है ।¹²¹ विवाद पदों का निर्णय करने का उत्तम राजा न्यायशास्त्र के ज्ञाता विद्वान्, ब्राह्मणों और परामर्शी दाता मन्त्रियों के साथ विनम्र भाव से न्यायालय में प्रवेश करे ।¹³¹

1- धर्मशास्त्रोऽहंति०, द्वितीय भाग, अध्याय ॥, लेखक पी०वी०काणे,
अनु० अर्जुन चौबे ।

2- आकारैरिङ्गि, तैर्गत्या चेष्टया भाषितेन च ।
नेत्र वक्त्रविकारैश्च गृह्यतेऽन्तर्गतं मनः ॥

मनु० ८/२६

3- व्यवहारान्दिदृक्षुः ब्राह्मणैः सह पार्थिवः ।
मन्त्रहोमन्त्रिभिश्चैव विनीतः प्रविशेत्तभाम् ॥

मनु० ८/१

अनुसृति में प्रतिपादित उपर्युक्त विधान का अर्थ यजुर्वेद में दृष्टिगोचर होता है। यजुर्वेद में कहा गया है कि प्रार्थी के वचन को सुनने वाले कानों से युक्त अग्नि के समान तेज से युक्त विद्वान्, अथवा राजा साथ चलने वाले कार्य के निर्वाहक विद्वानों के साथ हिंसा रहित राज-व्यवहार को अर्थात् ऐसे झुंझड़ों को जिसमें किसी के साथ अन्याय न हो सुने तथा प्रातः राजकार्यों को प्राप्त कराने वाले पश्चात् से रहित सबका भित्त वैश्य अथवा स्वामी जनों का मान करने वाला न्यायाधिमति आकाश के समान विशाल सभा में विद्यमान हो।¹⁴ महर्षि दयानन्द सरस्वती ने भी उक्त यजुर्मन्त्र का ऐसा ही भाव प्रतिपादित किया है कि सभापति राजा सुन्दर रीति से परीक्षित अमात्यों को स्वीकार करके उनके साथ सभा में बैठ कर विवाद करने वालों के वचनों को ध्यान से सुनकर यथा धर्म न्याय करे।¹⁵ राजा के द्वारा विवाद पदों पर न्याय दिया जाता है, अतः विवाद पदों का निरूपण आवश्यक है जो यथा स्थान किया जायेगा।

जिस राजा के द्वारा न्याय के निषर्गों का सम्यक् रूपेण पालन

4- ऋधि ऋत्कर्णं वन्दिभिः देवैरग्ने तयावभिः ।

आसीदन्तु वहिषि मित्रो अय्यमाप्रातर्वावाणोऽध्वरय ॥

यजु0 33/15

5- यजु0 33/15, महर्षि दयानन्द भाष्य ।

किया जाता है, वह अपने और अपनी प्रजाओं को धर्म, अर्थ और काम इन तीन पुरुषार्थों से युक्त करता है और यदि वह ऐसा नहीं करता है, तो वह अपना और अपनी प्रजाओं का विनाश कर देता है ।¹⁶¹ मार्कण्डेय पुराण में भी ऐसा ही प्रतिपादन किया गया है, कि जिस राजा के राज्य में वर्णों और जात्रियों के धर्मों का पालन किया जाता है, वह राजा इस लोक और परलोक में शाश्वत सुख एवं शान्ति को प्राप्त करता है ।¹⁷¹

ऋग्वेद में प्रयुक्त धर्मशब्द न्याय अर्थ का भी वाचक है, किन्तु नारद-स्मृति में धर्मशब्द को कर्तव्य के अर्थ में ग्रहण किया गया है । जब सत्यवादी व्यक्ति अपने-अपने कर्तव्य में पराप्त रहते हैं, तब न्याय की आवश्यकता ही नहीं होती । धर्म के नष्ट होने पर ही विवादों की प्रवृत्ति होती है और इन विवादों का निर्णायक राजा होता है ।¹⁸¹ देवन्मभट्ट बृहत् स्मृति चन्द्रिका में भी बृहस्पति को उद्धृत करके उपर्युक्त तथ्य का समर्थन

6- न्यायप्रवृत्तो नृपतिरात्मानमि च प्रजाः ।

त्रिवर्गेणोपसन्धत्ते निहन्ति धूममन्धया ॥

कामोनी 0तार 1/13

7- वर्णधर्मा न तीदन्ति यस्यः राज्ये तथाप्रजाः ।

वत्सतस्य सुखं प्रेत्य परत्रेह च शाश्वतम् ॥

मा०यु० 27/29

8- धर्मकतानाः पुरुषा यदात्म सत्यवादिनः ।

तदा न व्यवहारो भूम्न द्वेषो नापि मत्सरः ॥

नष्टे धर्मे ऋष्याणां व्यवहारः प्रवर्तते ।

दृष्टा च व्यवहाराणां राजा दण्डधरः स्मृतः ॥

नारद० 1/1/1

किया गया है।¹⁹ बृहस्पति राजधर्म सूत्र में कहा गया है कि न्याय व्यवस्था तदा मन्त्रिवर्ग के परामर्श और सम्मति से ही करनी चाहिए।¹⁰

विवाद पद =====

विवाद पद इस शब्द का प्रयोग व्यवहार पद के स्थान पर किया गया है। विवाद पद का अर्थ है विवाद, झगड़ा या मुकदमें का विषय।¹¹

मनुस्मृति में पद इस शब्द का प्रयोग स्थान के अर्थ में किया गया है।¹² प्राचीन काल में 18 विवाद पद मान्य थे।¹³ अर्थात् मनुष्यों के सभी प्रकार के झगड़ों को 18 भागों में बाँटा हुआ था। वेदों के स्वयं मनु इस संख्या को आदर्श नहीं मानते,¹⁴ व्यवहार पदों की संख्या को लेकर मनु एवं अन्य स्मृतिकारों में भिन्नता है। मनु ने व्यवहार -

9- धर्मप्रधानाः पुरुषाः पूर्वमात्मन हितकाः ।

लोभद्वेषाभिमतानां व्यवहारः प्रकीर्तितः ॥

बृह० स्मृ० अ० 2, पृ० ।

10- नयो मन्त्रिभिर्निरूप्य कार्यते ।

बृह० राजधर्म सू० 6/32

14 व्यवहारः तस्य पदं विषयः।¹⁵

मिता० श्रुति० 2/6

2- सद्यु स्थानेषु भूमिष्ठं विवादं चरतां नृणां ।

धर्मं तस्य त्रेह/सावतमाश्रित्य कुर्यात्कार्यविनिर्णयः ॥

मनु० 8/8

3- सद्यु स्थानेषु भूमिष्ठं विवादं चरतां नृणां ।

मनु० 8/8

पदों की संख्या 18 मानी है - 111 अणादान, 121 निक्षेप, 131
 अस्वामिविक्रय, 141 तम्भूय-तमुत्थान, 151 दत्तस्थानप्राकर्म, 161
 वेतनादान, 171 संविद-व्यतिक्रम, 181 क्रयविक्रयानुशय, 191 स्वाभि-
 पालविवाद, 1101 सीमाविवाद, 1111 वाक्यारूप्य, 1121 दण्ड-
 पारुष्य, 1131 स्तेय, 1141 साहत, 1151 स्त्रीसंग्रहण, 1161 स्त्रीपुंध्य, 1171
 विभाग और 1181 धृतसमाह्वय । 141

कौटिल्य के अर्थशास्त्र में व्यवहार पदों की संख्या 16 मानी है:-

प्रत्यहं देश दृष्टेयं शास्त्रदृष्टेयं हेतुभिः ।
 अष्टादशसु मार्गेषु निबद्धानि पृथक्पृथक् ॥
 तेषामाद्यमृणादानं निक्षेपोऽस्वामिविक्रयः ।
 तम्भूय च तमुत्थानं दत्तस्थानप्राकर्म च ॥
 वेतस्यैव दादानं संविदश्च व्यतिक्रमः ।
 क्रयविक्रयानुशयो विवादः स्वाभिपालयोः ॥
 सीमाविवाद धर्मश्च पारुष्ये दण्डवाचिके ।
 स्तेयं च साहतं चैव स्त्री संग्रहणमेव च ॥
 स्त्रीपुंध्यविभागश्च धृतसमाह्वयश्च च ।
 पदान्यष्टादशैस्तानि व्यवहारस्थिताविह ॥

- 111। शिना नाम के व्याख्या, 12। दाय भाग, 13। तीमा विवाद
 14। समयस्थानपाकर्म, 15। अणादान, 16। उपनिधि, 17। कर्मकर रूप,
 18। समूय समुत्थान, 19। विक्रीत-क्रीतानुगम, 110। दत्तस्थानपाकर्म,
 111। अस्वामिविक्रय, 112। ताहस।संग्रहण, 113। वाक्पारुष्य,
 114। दण्ड पारुष्य, 115। धूततमाह्वय, 116। प्रकीर्णक । 15।

याज्ञवल्क्य के अनुसार व्यवहार पद 20 हैं :-

- 111। अणादान, 12। उपनिधि, 13। दायविभाग, 14। तीमा विवाद,
 15। स्वामिपाल विवाद, 16। अस्वामिविक्रय, 17। दत्ताप्रदानिक,
 18। क्रीतानुगम, 19। अयुषेत्याशुष्या, 110। संविदव्यतिक्रम, 111।
 वेत्तादान, 112। धूततमाह्वय, 113। वाक्पारुष्य, 114। दण्डपारुष्य,
 115। ताहस, 116। विक्रीयासंग्रदान, 117। समूय-समुत्थान, 118।
 स्तेय, 119। स्त्रीसंग्रहण, 120। प्रकीर्णक । 16।

नारद ने व्यवहार पदों की संख्या 18 मानी है :-

- 111। अणादान, 12। निधेय, 13। समूय-समुत्थान, 14। दत्ताप्रदानिक,
 15। अयुषेत्याशुष्या, 16। वेत्तस्थानपाकर्म, 17। अस्वामि विक्रय,
 18। विक्रीयासंग्रदान, 19। क्रीतानुगम, 110। समयस्थानपाकर्म, 111।
 क्षेमविवाद, 112। स्त्रीपुंसयोग, 113। दायभाग, 114। ताहस, 115।
 वाक्पारुष्य, 116। दण्ड पारुष्य, 117। धूततमाह्वय, 118। प्रकीर्णक । 17।

5- कौटिलीय

6- याज्ञ0, व्यवहाराध्याय

7- नारद0

बृहस्पति के अनुसार व्यवहार पदों की संख्या 19 है :-

- 111 कुतीद, 121 निधि, 131 अदेयाध, 141 सम्भूय-समुत्थान, 151
भृत्यदान, 161 अशुश्रूषा, 171 भूवाद, 181 अस्वामिपिक्रय, 191
अय पिक्रयानुशय, 1101 तम्यातिक्रय, 1111 स्त्रीपुंसयोग, 1121 स्तेष
1131 दायभाग, 1141 अक्षेपन, 1151 वाक्यारूप्य, 1161 दण्ड्यारूप्य,
1171 वध, 1181 स्त्रीसंज्ञ, 1191 प्रकीर्णक ।¹⁸¹

शु के अनुसार न तो राजा या राजकर्मचारी को मुक्तमा
आरम्भ करना चाहिए और न ही राजा को किसी वादी द्वारा लाये
गये मुक्तमों को दबाना चाहिए या उत पर मौन रहना चाहिये ।¹⁹¹

गौतम ने कहा है कि प्रतिवेदन करने वाले को नम्रतापूर्वक अपने
अभियोग को न्यायाधिकारी के समक्ष रखना चाहिए ।¹¹⁰¹ कात्यायन
के अनुसार यदि वादी या प्रतिवादी न्यायालय में आना चाहें तो राजा
को अपने क्रभाव या लोभ के कारण उनके झगड़ों को निपटाने के लिए स्वयं
तैयार नहीं रहना चाहिए ।¹¹¹¹ मानतोल्मात ने भी इसी बात का

8- बृह0

9- नोत्पादयेत्स्वयं कार्यं राजा नाप्यस्य पुरुषः ।
न च प्रापितमन्येन गृह्येदं कथं च न ॥

शु0 8/43

10- गौ0 धर्म सू0

11- न राजा तु वशित्वेन धनलोभेन वा पुनः ।
स्वयं कार्याणि कुर्वीत नराणामपिवादिनाम् ॥

कात्या0 । व्यव0मुख, पृ0 285 से

उद्धृता

वर्णन किया है ।¹¹²¹ मनु ने कहा है कि राजा को बहुत से कण्टकों को दूर करना चाहिए ।¹¹³¹ नारद के अनुसार वे सभी विषय जिनमें राजा अपनी ओर से हाथ बंटाता है प्रकीर्णक कहलाते हैं, जो इस प्रकार हैं :- राजा की आज्ञा का उल्लंघन, पुर प्रदान, मन्त्रियों आदि में परस्पर भेद, पाण्डित्यों, नैगमों, ब्रह्मियों, गणों के कर्तव्य तथा विषय, पिता पुत्र के झगड़े आदि ।¹¹⁴¹

~~कण्टक~~

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अज्ञादान

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अज्ञ चुका देने की भावना प्राचीन कालीन है । अग्नेद में कहा है :- जिस प्रकार अज्ञ चुकाया जाता है उसी प्रकार बुरे स्वप्नों के बुरे

12- स्वयं नोत्पादयेत्कार्यं समर्थः पृथिवीपतिः ।

नाददीत तथोत्कोचं दत्तं कार्यार्थिना नृपः ॥

मानसोत्पत्त 2/20/1274

13- कण्टकोदरेण नित्यमतिष्ठेद्यत्नमुत्तमम् ।

मनु 9/252

रक्षणार्थमुत्तमानां कण्टकानां च शोधनात् ।

अनेन्द्रास्त्रिदिव्यं अस्त्रं प्रजापातनतत्पराः ॥

मनु 9/253

14- नारद 0

प्रभावों को दूर भगाना चाहिए, ¹¹ ऋग्वेद में ही एक अन्य स्थान पर
अव्या है कि जुआरी छिप-छिप कर रात्रि में अन्य लोगों के यहाँ धन
प्राप्ति के लिए जाता है । ¹² तैत्तिरीय ब्राह्मण में भी इत लोक, परलोक
एवं देवलोक के ऋणों से मुक्त होने का वर्णन है । ¹³

निरुक्तकार ने ऋग्वेद के मन्त्र 13/53/14 पर टिप्पणी करते हुए
वहाँ प्रयुक्त प्रमगन्द शब्द का अर्थ अति तूदखोर कुल में उत्पन्न किया है । ¹⁴
ऋग्वेद में ब्रह्मणस्पति को ऋण लौटा देने वाला कहा है और आदित्यों को
ऋण इकट्ठा करने वाले कहा है । ¹⁵ ऋग्वेद में ही उन पुरोहितों को जो

1- यथा कलां यथा शक्र यथ ऋणं तन्नमयामति । स्वा दुःष्वप्स्यं
तर्वमाहृत्ये तं नयाम्कयनेहतो व उहतः तुरुत्यो व उत्तयः ॥

ऋ 8/47/17

2- जात्या तप्यते कितवत्य हीना माता पुरुष्य चरतः स्वस्वित् ।
ऋणावा बिभ्यदन्मिच्छेमानो न्येषाम्कतुभ्य नवतेमेति ॥

ऋ 10/34/10

3- अनृणा अत्तिमन्ननृणाः परत्तिमन् तृतीये लोके अनृणाः स्याम ।
ये देवयाना उत पितृयाणाः सर्वान्यथो अनृणा आधीयेम ॥

तै० ब्रा० 3/7/9/8

4- मगन्दः कुतीदी मागन्दो मामागमिष्यति ददाति तदपत्यं प्रमगन्दः
अत्यर्तं कुतीदि कुलीनः ।

निरुक्त 6/32

5- धारयन्त आरित्यातो जगत्स्था देवा विशवत्य भुवनत्य गोपाः
दीर्घाधिषो रक्षमाणा अयुर्मृतावानश्चयमाना ऋणानि ॥

ऋ 2/27/4

सोमरस निकालते हैं उन्हें अन्न देने का प्रावधान है ।¹⁶¹

महाभारत के आदिपर्व में चार प्रकार के अन्नों का वर्णन है
तीन वैदिक अन्न तथा चौथा मनुष्य अन्न ।¹⁷¹ अनुशासन पर्व में पांच अन्न
वर्णित हैं - देव अन्न, अग्नि अन्न, ^{विश्वरूप} पितृअन्न तथा अतिथि अन्न ।¹⁸¹ नारद
ने मूलधन के फलस्वरूप निश्चित लाभ प्राप्त करने को कुत्सीद कहा है तथा
जो लोग इस प्रकार की वृत्ति करते हैं उन्हें कुत्सीदी कहा है ।¹⁹¹
बृहस्पति का ध्येय है कि जो चार गुने और आठ गुने के रूप में कित्ती
दुःखित व्यक्ति से बिना कित्ती संकोच या अनुताप के ग्रहण करते हैं उन्हें
कुत्सीद कहा जाता है ।¹⁰¹ नारद ने व्याज या सूद के चार प्रकार दिये
हैं - 111 कारिता:- जो ऋद्धाता द्वारा निश्चित किया जाये,

121 कालिका:- प्रतिमास दिया जाने वाला व्याज, 131 कायिका:- एक
पण या चौथाई पण जो प्रतिदिन दिया जाये पर मूलधन ज्यों का त्यों
पड़ा रहे, 141 चक्रवृद्धि:- वह वृद्धि जो व्याज पर भी लगती हो ।¹¹¹¹

6- अ० 6/61/1

7- अग्नेयतृभिः संयुक्ता जायन्ते मानवा भुवि ।

पितृदेवर्षिः मनुजैर्देवैः तेभ्यश्च धर्मतः ॥

आ० पर्व 120/17/20

8- अमृन्मृच्य देवानामृषीणां च तथैव च ।

पितृनामथ विप्राणामतिथीनां च पन्चकम् ॥

अनु० पर्व 37/17

9- नारद० 4/98

10- कुत्सितात्सीदतश्चैव निर्विशकैः प्रगृह्यते ।

चतुर्गुणं चाष्टगुणं कुत्सीदारन्ध्रमतः स्मृतम् ॥

बृ० 11 व्यवहार मूल्य द्वारा उद्धृत, पृ० 1671

11- नारद० 4/102-104

मनु ने भी हृद का व्याज के कारिता, कारिका, कामिका और चक्रवृद्धि इन चारों प्रकारों का वर्णन किया है ।¹¹²¹

निक्षेप

निक्षेप, उपनिधि तथा न्यास शब्द पर्यायवाची हैं । इन सभी का एक ही अर्थ है, अमरकोश में इन्हें पर्यायवाची माना है ।¹¹¹ याज्ञवल्क्य स्मृति में न्यास एवं निक्षेप को उपनिधि से अलग माना गया है । न्यास शब्द का अर्थ परोक्ष में घर कितनी अन्य व्यक्ति के हाथ में तौबी गई वस्तु तथा निक्षेप सम्मुख दी हुई वस्तु माना है ।¹¹² उपनिधि का अर्थ करते हुए याज्ञवल्क्य ने कहा है कि जब कितनी पात्र में रख कर रूप या संख्या आदि बताये बिना कोई वस्तु दूसरे को दी जाती है वह वस्तु उपनिधि कहलाती

12- नातितावित्तरीं वृद्धिं न चादृष्टां पुनर्हीर्य ।

चक्रवृद्धि काल वृद्धिः कारिता कायिका च वा ॥

मनु 8/153

1- पुमानुपनिधिन्यासः प्रतिदानं तदर्थगम्-----। अमरकोश

2- न्यासो नाम गृह्णन्नाग्निं दर्शयित्वा तापरोक्ष्येव गृह्णन्कृते प्रक्षेपो गृह्णन्नाग्निं समर्पणीयमिति । समर्प्य तु समर्पणं निक्षेपः ।

याज्ञ 0 मि 0 2/67

है । उसे उती रूप में वापिस करना होता है ।¹³¹ मनु ने भी निक्षेप एवं उपनिधि को अलग-अलग माना है । निक्षेप बिना मुहर बन्द धरोहर तथा उपनिधि मुहरबन्द धरोहर होती है ।¹⁴¹ बृहस्पति के अनुसार इस प्रकार की धरोहर कितनी दूतरे को तभी दी जाती है जब कोई अपना घर छोड़ कर कहीं जाता है या राजा से डरता है या अपने सम्बन्धियों को उससे वंचित करना चाहता है ।¹⁵¹ मनु का कहना है कि धरोहर कुलीन, अच्छे आचरण वाले, धर्मात्मा, सत्यवादी, बहुत परिवार वाले, श्रेष्ठ, धनवान् व्यक्ति के पास रखनी चाहिए ।¹⁶¹ मनु के ही अनुसार धरोहर जिस प्रकार अर्थात् साक्षियों के सामने अध्या रकान्त में दी गई हो उती प्रकार उती अवस्था में वापिस लेनी चाहिए । जैसा देना है वैसा ही लेना

३ ✱ वातनस्थानाख्याय हस्तेऽन्यस्य यदप्यंते ।

द्रव्यं तदोपनिधिं प्रतिद्वेयं तथैव तत् ॥

याज्ञ० २/६५

४ ✱ आधिः सीमा बालकं निक्षेपोपनिधिः स्त्रियः ।

राज्यं श्रोत्रियस्य च न भोगेन प्रणयति ॥

मनु० ८/१४९

५- स्थानत्यागाद्वाज्जमाह दायानां च वन्यनात् ।

स्वद्रव्यमप्यतिन्यत्य हस्ते निक्षेपमाह तस्य ॥

कुड० ॥ स्मृत्युच० अ० २, पृ० १७८ ।

६- कुलमे वृत्तं तस्यन्ते धर्मो सत्यवादिनीति ।

महापक्षे धनिन्यार्ये निक्षेपं निक्षेपेद बुधः ॥

मनु० ८/१७९

होता है । ¹⁷¹ मनु ने कहा है कि कभी भी निक्षेप और उपनिधि देने वाले के प्लिना और किती को नहीं देनी चाहिए । देने वाले के मर जाने पर ये लौटानी नहीं पड़ती तथा जीवित रहते कभी नष्ट नहीं होती । ¹⁸¹ साथ ही मनु ने यह भी कहा कि यदि धरोहर रखने के मर जाने पर उसके वारिष्ठों को जो व्यक्ति स्वयं ही लौटा दे तो उस व्यक्ति पर राजा या धरोहर रखने वाले के लौटाने पर राजा या धरोहर रखने वाले के उत्तराधिकारियों को तद्विह या दावा नहीं करना चाहिए । ¹⁹¹ याज्ञवल्क्य ने कहा है कि उपनिधि राजा, देविक उत्पात द्वारा नष्ट हो या चोरों द्वारा उसका हरण कर लिया गया हो तो प्रतिदेय नहीं होता और यदि स्वामी के मांगने पर नहीं देता और बाद में किसी कारण नष्ट हो जाती

है तो उसे देना होता है और साथ ही उसके बराबर दण्ड भी चुकाना होता है ।¹⁰ कात्यायन के अनुसार उपनिधि मारने पर न लौटायी जाये तो वह जबरदस्ती ली जा सकती है अवराधी को अर्थ दण्ड देना पड़ता है ।¹¹ नारद का मत है कि अल्पवयस्क के धन के संरक्षक को सावधानी रखनी होती है । ऐसा न करने पर वह धन का दावेदार होता है ।¹²

अस्वामिविक्रय

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कुला निधेय, मुहर बन्द धरोहर, दूसरे को दी जाने वाली सामग्री, चोरी की वस्तु, किसी उत्सव के लिए ली गई वस्तु, प्रतिभूति, किसी की हुटी हुई वस्तु अस्वामिविक्रय के अन्तर्गत आती है ।¹¹ बृहस्पति ने भी इसी मत का समर्थन किया है ।¹² कात्यायन के मन्वानुसार

10- न दाप्योऽवहृतं तं तु राज्ञेयिकतत्करेः ।

अप्येन्मार्गितोदत्ते दाप्यो दण्डं च तत्तमम् ॥

याज्ञ0 2/66

11- कात्या0 अ० 610

12- प्रतिगृह्णाति योगद्वयश्च तद्विधानं नरः ।

तत्प्राप्त्येष भेदः : षडेते विधयः समाः ॥

नारद0 5/5

1- निक्षिप्तं वा परद्रव्यं नष्टं लब्ध्वापहृता वा ।

विहीयतेऽसमक्षं यद् विहीयोऽस्वामि विक्रयः ॥ नारद0 7/1

2- निक्षेपान्वाहितन्यासस्तथापि बन्धकम् ।

उपांशं येन विक्रीतमस्वामी सोऽभिधीयते ॥

बृह0 ॥ बृहति च0 2, पृ0 2।3॥

यदि अश्वामिषिष्य, दान आदि करता है तो उसे राजा अथवा
 न्यायाधीश द्वारा लौट वा देना चाहिए ।¹³¹ मनु ने भी कहा है
 कि मालिक न होने पर यदि कोई धन देवे वा विषय करे तो व्यवहार
 मर्यादा रहित होने से वह देना तथा विषय करना नाजायज होता है ।¹⁴¹
 याज्ञवल्क्य के अनुसार अश्वामी द्वारा विषय की हुई वस्तु पर स्वामी
 का अधिकार हो जाता है । यदि खरीददार अश्वामी का मान चोरी से
 खरीदता है तो वह दण्ड का भागी होता है, यदि वह ऐसे लोगों से
 मान खरीदता है जिनके पास सामान बेचने का साधन न हो, या बहुत
 कम दाम में खरीदता है, अथवा अर्थ राशि में खरीदता है या दुश्चरित्र
 लोगों से खरीदता है तो उसे चोरी के दण्ड का भागी होना पड़ता है ।¹⁵¹
 मनु ने कहा है यदि व्यापारी को धन विक्रीन मिले, किन्तु यह जानता
 हो कि उसने उस वस्तु को धर्मतः बाजार से मूल्य देकर लिया है तो

3- कात्या० 612

4- अश्वामिना कृतो यस्तु दायो विषय स्य वा ।

अकृतः स तु विज्ञेयो व्यवहारे यथा स्थितिः ॥

मनु० 8/199

5- त्वं लभेत्तान्यविक्रीतं क्रेतुर्दोषोऽप्रकाशिते ।

हीनाद्द्रवो हीन मूल्ये वेना हीने च तत्करः ॥

वाङ्म० 2/168

व्यापारी निर्दोष होता है । इससे उसको छोड़ दें और विक्रयकर्ता को उसकी वस्तु दे दें ।¹⁶ याज्ञवल्क्य का कथन है कि यदि क्रेता द्वारा विक्रेता उपस्थित कर दिया जाये तो वह कानून के पत्र से छूट जाता है और विक्रेता पर कार्यवाही होने लगती है और जब उसके विपक्ष में फैसला होता है तो उसे क्रेता को वस्तु का मूल्य, राजा को अर्ध दण्ड तथा वस्तु के स्वामी को उसकी वस्तु लौटानी पड़ती है ।¹⁷ कात्यायन के अनुसार यदि विक्रेता विदेश चला गया हो तो उसे उपस्थित करने के लिये क्रेता को पर्याप्त समय देना चाहिए ।¹⁸ मनु ने लिखा है यदि मालिक के वंश का धन हो तो उस पर छः तो पण दण्ड राजा लगावे, यदि मालिक के वंश का नहीं हो तथा उसका अधिकार नहीं हो तो वह चौर का दण्ड पावे ।¹⁹ मनु-वे-मिर्ह-हे-वर्हि कौटिल्य के अनुसार जब कोई बहुत से

6- अथ मूलमनाहार्यं प्रकाशकृत्यशोधितः ।

अदण्ड्यो मृष्यते राक्षा नाष्टिको लभते धनम् ।

मनु 8/202

7- विक्रेतर्दंशमाप्युद्धिः स्वामी द्रव्यं नृणो दमम् ।

क्रेतामूल्यमवाप्नोति तत्तमायत्तस्य विक्रयी ॥

याज्ञ 2/170

8- कात्या 6/६ 615

9- अपहार्यो भ्रैच्येव तान्वयः षट्कर्तं दमम् ।

निरन्वयो नपतरः प्राप्तः स्वाच्योर कि लिपिषम् ॥

मनु 8/198

व्यक्तियों के लक्ष घोरी का सामान खरीदता है और बता चलने पर लौटा देता है तो उस पर अपराध नहीं लगता ।¹⁰ याज्ञवल्क्य के अनुसार जिसकी वस्तु नष्ट हो जाती है उसे प्रमाण के साथ सिद्ध करना होता है कि उसके उसे कभी नहीं बेचा स्वयं केता को भी यह सिद्ध करना होता है कि उसने अमुक व्यक्ति से उचित मूल्य देकर वस्तु खरीदी थी ।¹¹ कात्यायन ने भी याज्ञवल्क्य के ही मत का समर्थन किया है ।¹² कात्यायन के अनुसार अस्वामिविक्रय में साक्षियों एवं सम्बन्धियों के प्रमाणों के अतिरिक्त किसी अन्य मानुषी या दैविक प्रमाण की आवश्यकता नहीं है ।¹³ याज्ञवल्क्य का कथन है कि यदि स्वामी अपनी वस्तु किसी और के पास देके तो वह उसे राजकर्मचारियों के पास ले जावे किन्तु यदि वह यह समझे कि रस्ता करने में अधिक में समय लगेगा या उसे अधिक दूर जाना पड़ेगा तो

10- कोटिशा 3/16

11- विक्रेतुर्दण्डाच्छुद्धिः स्वामी द्रव्यं नृपो दमय ।

केतामूल्यमवाप्नोति तस्माच्छतस्य विक्रमी ॥

याज्ञ 2/170

12- कात्या 6/13

13- प्रकारं च क्रमं कुर्यात्तापुम्भिरितिभिः स्वकैः ।

न तत्रान्या क्रिया प्रोक्ता दैविकी न च मानुषी ॥

कात्या 6/16

वह उसे स्वयं न्यायालय में पकड़कर ला सकता है ।¹⁴ बुद्धपति का कथन है कि यदि मुद्दमें में प्रमाण न हो तो राजा वादियों एवं प्रतिवादियों के कथनों के अधिक, तम या न्यून रूपों पर विचार करके निर्णय देवे ।¹⁵

तम्भ-तमुत्थान

तम्भ शब्द तस्य उषतर्ग भू धातु से बना है जिसका अर्थ है "एक साथ होना" । तमुत्थान का अर्थ है "व्यवसाय या व्यापारकर्म" । अतः दोनों को मिलाकर अर्थ हुआ वह व्यापार या व्यवसाय जिसमें साझा हो । कात्यायन के अनुसार जब कोई शिल्पकार या कृषि परस्पर मिलाकर कार्य करते हैं तो उसे तम्भ-तमुत्थान कहते हैं ।¹⁶ बुद्धपति का कथन है कि कृषि ,

14- नष्टापहृतमात्ताप हतारं ग्राहयेन्नरम् ।

देश कालातिपत्तौ च गृहित्वा त्वयमर्षयेत् ॥

याज्ञ0 2/169

15- प्रमाणहीन वादे तु पुरुषापेक्षया नृपः ।

तमन्यूनाधिक्येन स्वयं कुर्याद्विनिर्णयम् ॥

बृह0 । स्मृ0 2, पृ0 216 तथा वि0 रत्ना0 पृ0 108 ।

16- तममेतान्तु ये केचिच्छिल्पिनो वणिजोऽपिवा ।

अविभज्य पृथग्गतेः प्राप्तं तत्र फलं तमम् ॥

कात्या0 624

दर्से, अनलस, प्राज्ञ, सिक्कों के जानकार, आय-व्यय, ईमानदार, गूर, व्यक्तियों के साथ साझा करना चाहिए, इनके विपरीत के साथ नहीं।¹²¹ व्याप्त के अनुसार प्रत्येक साझेदार का कर्तव्य है कि वह साझेदारों के साथ चाहे वे उपस्थित हों या अनुपस्थित क्रय विक्रय में ईमानदारी बरते।¹³¹ याज्ञवल्क्य का कथन है कि जब कोई अनधिकृत रूप से या बिना किसी मालिक के आज्ञावश कोई ऐसा कार्य कर सकता है जिससे हानि होती है तो उसे हरजाना देना पड़ता है।¹⁴¹ नारद भी याज्ञवल्क्य के ही मत का समर्थन करते हैं।¹⁵¹ याज्ञवल्क्य के अनुसार यदि कोई साझेदार दुष्टता करे या छल प्रवृत्ति करे तो बिना लाभार्थ दिये उसे साझे से अलग किया जा सकता है। यदि कोई साझेदार स्वयं कार्य न कर सके तो वह तीसरे के द्वारा साझे में कार्य करा सकता है।¹⁶¹ याज्ञवल्क्य के अनुसार यदि कोई साझेदार

2- हुत्तेशिन दधानततैः प्राज्ञैर्नाग्नोदिभिः । आयव्ययैः शुचिभिः गुरैः
कुर्यात्तदक्रियाय । अस्तितान्तरोगार्तमन्दभाग्य निराश्रयैः ।
वाणिज्याया तद्वैतु न कर्तव्या कुपेः क्रिया ॥

बृह० ॥१४०७०२, पृ० १८४॥

3- तमश्मत्तमक्षं वाऽव्ययन्तः परस्परम् ।
नानापण्यानुतारायो प्रकुर्युः क्रयविक्रयो ॥

व्याप्त ॥१४०७०२, पृ० १८५

4- प्रतिधिक्कादिष्टं प्रमादाद्यच्च नाशितम् ।
त तद्व्यादिष्टवाच्य रक्षितं ददशमार्तिभाक् ॥

याज्ञ० २/२६०

5- नारद०६/५

6- जिह्वं त्यजेन्निर्लाभ्यस्ततोऽन्येन कारयेत् ।

याज्ञ० २/२६५

विदेश चला जाता है अथवा मर जाता है तो उसका भाग उसके उत्तराधिकारियों, सम्बन्धियों को दिया जा सकता है । यदि कोई उत्तराधिकारी अधिकार न जताये तो दस वर्षों तक प्रतीक्षा करने के उपरान्त उसका भाग स्वयं साबितदार ले सकता है और उनके सेना न करने पर स्वयं राजा उसे प्राप्त कर सकता है ।¹⁷¹

कात्यायन का कथन है कि साझे में शिष्यियों को चार भाग जो दस या कुल होते हैं उन्हें तीन भाग, आचार्य को दो भाग तथा शिष्यों को एक भाग मिलता है ।¹⁸¹

दत्तानपाकर्म

मेधातिथि ने दत्तानपाकर्म का अर्थ करते हुए कहा है - जो कुछ दिया गया है या दिये जाने के लिए प्रतिश्रुत है उसका उचित आदान या अपहरण ।¹¹¹

7- देशान्तरे गते प्रेतद्वयं दायदबान्धवाः ।

जातयो वा हरेयुस्तदागतास्तेर्विना नृषः ॥

याज्ञ0 2/264

8- कात्या0 632

1- अश्रिया क्रियापायः तस्य त्वाप्रतिषेधः । दानमेव च चलितं भवति ।

स्यैव दाने स्थितिरिति यावत् । कथं प्रतिश्रुत्यादीयमाने धर्मो न नश्यतीति नैषा शंका कर्तव्या । सद्यस्वात्र-----प्रत्यादीयते ।

मेधातिथिः मनु08/2।41

विज्ञानेश्वर । मिताक्षरा ने दत्तानपाकर्म की व्याख्या इस प्रकार की है :-
 वह जिसको जो दिया गया है पुनः लौटाया नहीं जा सकता, क्योंकि दान
 न्यायानुकूल है ।¹² नारद के इसकी परिभाषा इस प्रकार की है कि जब
 कोई व्यक्ति कुछ देने के उपरान्त उसे पुनः लौटा लेना चाहता है, क्योंकि
 वह कार्य न्यायानुकूल न होने के कारण अनुचित था तो इसे दत्तानपाकर्म
 कहा जाता है ।¹³ नारद ने इसे चार भागों में बाँटा है :- 11 जो
 न दिया जा सके, 12 जो दिया जा सके, 13 जो देना न्यायानुकूल हो,
 14 जो देना न्यायानुकूल न हो ।¹⁴ कात्यायन के अनुसार जो सम्पत्ति
 अपनी है, कुटुम्ब के भरण-पोषण का आँखोझर उतको दिया जा सकता
 है ।¹⁵ कौटिल्य के अनुसार पुत्र एवं पत्नी नहीं दी जा सकती इनका दान
 श्रमियों द्वारा वर्जित है ।¹⁶ कौटिल्य के अनुसार ही यदि प्राण संशय में

2- दत्तस्य अदानं पुनर्हरणं यत्सिन्दानाख्ये तद् दत्ताप्रदानिकं
 नाम व्यवहारपदम् ।

मिता० भा० 2/175

3- नारद० 7/1

4- नारद० 7/2

5- सर्वस्यं गृहवर्जं तु कुटुम्बभरणाधिकम् ।

यद् द्रव्यं तत्सर्वकं देयमदेयं स्यादतोन्वया ॥

कात्या० 640

6- सर्वस्यं पुत्रदारमात्मानं प्रदायानुशासिनः प्रयच्छेत् ।

कौटिल्या० 3/16

कोई व्यक्ति अपने रक्षक को सम्पूर्ण सम्पत्ति दान कर देता है तो वह आगे चलकर दक्ष लोगों की सम्पत्ति से पुरस्कार मात्र देकर अपने पूर्ण प्रण को तोड़ सकता है । ¹⁷¹ गौतम के अनुसार यदि दानवात्र अधार्मिक हो तो दाता के द्वारा प्रतिष्ठित दान नहीं भी दिया जा सकता । ¹⁸¹ बृहस्पति के अनुसार जो अदत्त ज्ञान ग्रहण करते हैं या जो वर्जित दान करते हैं वे दोनों ही दण्डनीय हैं । ¹⁹¹

वेतनदानपाकर्म =====

वेतन देने या न देने का विवाद अति प्राचीन है । मनु ने कहा है कि यदि कोई सेवक रोग रहित होते हुए भी अपने निश्चित कार्य को अहंकार के कारण न करे तो राजा उस पर आठ कुण्डल दण्ड करे और उसे उस समय का वेतन न दे, ¹¹¹ परन्तु इसके साथ ही मनु ने अपने कार्य को ठीक प्रकार से करने वाले सेवक को बीमार पड़ने पर उस लम्बे समय का वेतन पाने का अधिकारी कहा है । ¹²¹ याज्ञवल्क्य के अनुसार वेतन लेकर काम छोड़ देने

7- कौटिलिआ 3/13

8- प्रतिश्रुत्याप्यधर्मसंपुक्ताय न दद्यात् ।

गौ ० धर्म ० 521

9- अदत्तभोक्ता दण्ड्यः स्यात्तन्मादेयप्रदायकः ।

बृह ० 1 त ० विलास पु ० 2281

1- भृतो नातो कुर्यादो दपार्त्कर्म यशोदितः ।

त दण्ड्यः कृष्णान्वष्टो न देयं चास्य वेतनम् ॥

मनु ० 8/215

2- आर्त्तितु कुर्यात्स्वयः तन् यथाभाषिमादितः ।

त दीर्घयावि कालस्य तल्लभेतेष वेतनम् ॥

मनु ० 8/216

वाले से दूनऽ वेतन स्वामी को दिलवायै जाना चाहिए । बिना वेतन लिये ही कार्य करना स्वीकार करके यदि कोई न करे तो वेतन के बराबर धन दिलाना चाहिए ।¹³ इसके साथ ही याज्ञवल्क्य ने यह भी कहा है कि यदि स्वामी वेतन निश्चित किये बिना ही सेवकों से कार्य लेता है, व्यापार, पशुपालन या खेती का कार्य लेता है तो उनसे राजा कार्यों के होने वाले लाभ से दसवाँ भाग सेवकों को दिलाए ।¹⁴ कौटिल्य ने भी याज्ञवल्क्य का ही समर्थन किया है ।¹⁵ याज्ञवल्क्य के अनुसार यदि सेवक काल एवं स्थान से सम्बन्धित नियमों का उत्कर्ष करे जिससे घाटा हो जाये अथवा यदि देश, समय के ज्ञान से कम तथा अधिक लाभ हो जाये तो अधिक वेतन दिया जाय सकता है ।¹⁶ कौटिल्य के अनुसार यदि नौकर वेतन लेकर

3- गृहीतवेतनः कर्मत्यनन्दिगुणमापहेत् ।

अगृहीते तमं दास्यो भृत्ये रक्ष्य उपस्करः ॥

याज्ञ० 2/193

4- दास्यस्तु दशमं भागं वाणिज्य पशुतत्यतः ।

अनिश्चित्य भृतिं यस्तु कारयेत्त मही क्षिता ॥

याज्ञ० 2/194

5- कर्षकस्यानां गोपालकसर्पिणां वैदेहकः पश्यानामात्माना

व्यवहृतानां, दशभागं संभाषितं वेतनोत्प्रेक्ष्य ।

कौटिल्य० 3/13

6- देशं कालं च योऽतीयात्तामं कुर्याच्च योऽन्यथा ।

तस्यात्स्वामिनाऽन्तोऽर्थि देयं कृतेऽर्थि ॥

याज्ञ० 2/195

भी काम न करे तो उसे 12 पण दण्ड देना चाहिए तथा उससे पशु आदि छीन लेना चाहिए ।¹⁷ साथ ही कौटिल्य का मत है कि यदि कार्य करने पर स्वामी वेतन न दे तो उसे छःपण का अथवा उचित पारिव्रजिक के दसवें भाग का या पूर्व निश्चित वेतन का ~~अर्ध~~ अर्ध दण्ड लगता है तथा सेवक वेतन ले लेने पर भी न पाने का अभियोग लगावे तो उस पर 12 प्रश्न पण या वेतन के पाँचवें भाग का अर्ध दण्ड लगता है ।¹⁸ नारद के अनुसार यदि सामान ढोने वाले की असावधानी से ही सामान नष्ट हो जाये तो उसे हरजाना देना पड़ता है ।¹⁹ विवाद रत्नाकर में भी ऐसा ही कहा है ।¹⁰ कौटिल्य के अनुसार सेवकों के तथो के सदस्यों को

7- गुहीत्वा वेतनं कर्माकुर्वतो भूक्तस्य द्वादश पणो दण्डः ।

कौटिल्य 3/14

8- वेतनादाने दशबन्धो दण्डः अव्ययोवा ।

अपव्ययमाने द्वादश पणो दण्डः पंचबन्धो वा ॥

कौटिल्य 3/13

9- भाण्डं व्यसनमागच्छ्यादि वाहक दोषाः ।

त दाप्यो यत्प्रणष्टं स्याद्वेवराजकृतादृते ॥

नारद 9/9

10- प्रमादान्नाशितं दाप्यः तर्जं छिद्रैर्हिनाशितम् ।

वि० रत्ना० पृ० 162

वेतन तंध ही देते थे । जैसा पूर्व निश्चित रहता था उसके अनुसार सारी कमाई बराबर-बराबर बांट दी जाती थी ।¹¹¹ याज्ञवल्क्य का भी यही कथन है कि इन साथ मिलकर काम करने वालों में जो बेईमान हो उसे लाभ न देकर बाहर कर दें और जो कोई स्वयं कार्य करने में अतर्क्य हो वह किसी दूसरे व्यक्ति से करावे । यह साझेदारी का नियम कर्मियों एवं शिल्पियों के लिए भी है ।¹²¹

संविद्व्यतिष्ठम् =====

धर्मशास्त्रों में संविद और समय दोनों ही शब्दों का प्रयोग किया है । इन ये दोनों शब्द पर्यायवाची हैं । मनु ने समय और संविद दोनों शब्दों का प्रयोग किया है । मनु ने "समय भेदिनाय" शब्द का प्रयोग की हुई प्रतिष्ठा या व्यवस्था को तोड़ने अर्थ में किया है ।¹¹¹ नारद ने समयव्या-नपाकर्म शब्द का प्रयोग किया है ।¹²¹ आपस्तम्ब धर्मसूत्र में समय शब्द

11- तद्धु भूताः संयतमुत्थातारो वा यथासंभाषितं वेतनं तमं वा विभजेरन् ।
कोटि०शा० ३/१४

12- जिह्मं त्यजेयुर्निताभमश्वतोऽन्येन कारयेत् ।
अनेन विधिराख्यात सतिवत्कर्षक कर्मिणाश्च ॥

याज्ञ० २/२६५

1- अत आर्वं प्रवक्ष्यामि धर्मं समय भेदिनाय ।

मनु० ८/२१८

2- नारद० १३/१

रुद्धि या अंगीकृत सिद्धान्त के अर्थ में आया है ।¹³ मनु ने कहा है कि जो मनुष्य गाँव, देश या किसी समुदाय से सत्य वचन पूर्वक प्रतिज्ञा, व्यवस्था या झरार करके फिर लोभ के कारण उसे भंग कर दे तो राजा उन्हें राष्ट्र से बाहर निकालदे ।¹⁴ याज्ञवल्क्य ने भी ऐसा ही कहा है कि जो सबसे सामूहिक का अपहरण करे अथवा ^{समूह} ~~सू~~ की व्यवस्था का उल्लंघन करे तो उसका सब कुछ हरण करके राज्य से निकाल देना चाहिए ।¹⁵ मनु ने प्रतिज्ञा या व्यवस्था को भंग करने वाले ^{प्र}चार सुवर्ण, छः निष्क और शतमान के दण्ड का विधान किया है ।¹⁶

3- अङ्गानां तु प्रधानैरव्यपदेश इति न्यायवित्तमयः ।

आप०धर्म सू० 2/4/8/13

4- यो ग्राम देश सङ्गधानां कृत्वा सत्येन संविदम् ।

वित्तविदन्नरो लोभात्तं राष्ट्रं ~~सङ्ग/प्रो/प्र/~~ क्षिप्यात्तयेत् ॥

मनु० 8/219

5- कद्रव्यं दृष्ट्वा तु संविदं सङ्गं येच्य यः ।

सर्वस्वहरणं कृत्वा तं राष्ट्रं क्षिप्यात्तयेत् ॥

याज्ञ० 2/137

6- निगृह्य दापयेच्चैनं सममव्यभिचारिणम् ।

यतुः सुवर्गान्धनिष्कारिष्ठतमानं च राजतम् ॥

मनु० 8/220

ऋय विक्रयानुशस =====

ऋय विक्रयानुशस का अर्थ है ऋय विक्रय के बाद पछतावा या पश्चात्ताप । धर्मशास्त्रों में इसका पूर्ण वर्णन है । मनु ने कहा है कि कितनी वस्तु को बेचकर अथवा खरीद कर जिस व्यक्ति के मन में पश्चात्ताप अनुभव हो तो वह उस वस्तु को दश दिन के भीतर वापिस दे दे अथवा ले ले ।¹¹ नारद के अनुसार यदि कोई व्यक्ति तत्सम्पत्ति बेचकर उसे क्रेता को नहीं देता तो उसे बेचने और देने के बीच की अवधि तक के हरजाने के साथ देना पड़ता है यदि वह तत्सम्पत्ति चल हो तो लाभ का मूल्य भी देना पड़ता है ।¹² कौटिल्य ने लिखा है कि यदि बिक्री करने के बाद विक्रेता सामान न दे या क्रेता ऋय के उपरान्त उसे न ले तो दोनों को 12-12 पणों का दण्ड देना चाहिए ।¹³ याज्ञवल्क्य के अनुसार यदि ऋय की हुई

१- ऋत्वा विक्रीय वा किन्चिदप्येहानुशसो भवेत् ।

तोऽन्तर्दशाहात्तद् द्रव्यं दद्याच्चैवाददीते वा ॥

मनु 8/222

२- विक्रीय पण्यं मूल्येन क्रेतुर्वो न प्रयच्छति ।

स्थावरस्योदयं दाप्यो जंगमस्य क्रियाफलम् ॥

नारद 11/4

३- विक्रीयपण्यमप्रयच्छतो द्वादशमणो दण्डः ।

ऋत्वापण्यमप्रयच्छतो द्वादश पणो दण्डः ॥

कौटिल्य 2/15

वस्तु को क्रेता मागि और विक्रेता न दे और इस बीच उस वस्तु में राजकृत या दैवकृत उत्पात हो से दोष आ जाय तो उसकी हानि विक्रेता को ही उठानी पड़ती है ।¹⁴ वस्तु को वापिस देने या लेने के विषय में मनु ने कहा है कि दश दिन के बाद न तो वापिस दे और न ही वापिस ले यदि कोई वापिस देता है या लेता है तो राजा उस पर छःतौ पण का जुर्माना करे ।¹⁵ कौटिल्य ने व्यापारियों, कृषकों, चरवाहों एवं वर्णतंत्रों तथा उच्च वर्गों को वस्तु लौटाने के लिए क्रमशः एक, तीन, पाँच एवं तात रात्रियों की छूट दी है ।¹⁶

स्वामिपाल विवाद =====

भारत कृषि प्रधान देश है । कृषि प्रधान देश में पशुओं का बहुत महत्त्व है । आदिकाल से ही पशुओं के स्वामी तथा उनके रक्षक मौक्तिकों के बीच

4- राजदेवोपघातेन पश्ये दोष्युपागते ।

हानि विक्रेतुरेवातो याचितस्या प्रयच्छतः ॥

याज्ञ० 2/236

5- परेण तु दशाह्वय न दद्यान्नापि दापयेत् ।

आददानो ददध्यैव राज्ञा दशह्वयः शतानि षट् ॥

मनु० 8/223

6- वैदेहकानामेकरात्रमुशयः कर्षकाणां त्रिरात्रय, गोरक्षकाणां पञ्चरात्रय, व्यामिश्राणां उत्तमानां च वर्णानां वृत्तिविक्रेषे तप्तरात्रय ॥

कौटिल्य० 3/15

झगड़े होते रहते थे । स्वामी पाल विवाद का भी यही अर्थ है । स्वामी पाल विवाद के विषय में मनु ने कहा है कि पशु मालिकों और चरवाहों में मतभेद हो जाने पर झगड़ा हो जाता है ।¹¹¹ मनु के अनुसार दिन में पशुओं की जिम्मेदारी पशुपाल पर तथा रात्रि में स्वामी की होती है । इसके अतिरिक्त यदि पशु पाल पशुओं को दिन रात अपने पास रखता है तो जिम्मेदारी उसकी होगी ।¹²¹ याज्ञवल्क्य के अनुसार जैसा पशु स्वामी ने प्रातः काल चरवाहे को सौंपा हो वैसा ही वह चरवाहा तीसकाल स्वामी को लौटा दे अन्यथा उसकी असावधानी से पशु मर जाने या छो जाने पर चरवाहा जिम्मेदार होगा तथा स्वामी उसके वेतन से उसका मूल्य ले लेंगे ।¹³¹ मनु ने अनुसार यदि कोई पशु छो जाये, नष्ट हो जाये, कुत्ते खा जायें, विपत्ति में फँसकर मर जाये, चरवाहे की उपेक्षा के कारण

1- पशुषु स्वामिनां चैव पालानां च व्यवतिक्रमे ।

विवादं सम्प्रवक्ष्यामि यथाधर्मं तत्त्वतः ॥

मनु 8/229

2- दिवा वक्तव्यता पाले रात्रौ स्वामिनि तद गृहे ।

योगक्षेपेऽन्यथा चेत्तु पालो वक्तव्यतामियात् ॥

मनु 8/230

3- यथार्पितान्पशून्गोपः सायं प्रत्यर्पयेत्तथा ।

प्रमादमुत्तनष्टाविच प्रदाप्यः कृत्वेतलः ॥

याज्ञ 2/164

पशु नष्ट हो जाये तो चरवाहा ही देनदार होगा ।¹⁴

स्वामिनि विवाद

ऋ ने पशुपालक को वेतन न देने की अवस्था में कहा है कि जो पशुपालक स्वामी से वेतन न लेकर दूध लेता हो तो वह 10 गायों में से एक श्रेष्ठ गाय का दूध स्वामी की अनुमति से ले सकता है ।¹⁵ पशुओं की रक्षा के विषय में आपस्तम्ब धर्म सूत्र में भी कहा गया है कि पशु मर जाये या नष्ट हो जाये चरवाहा दण्ड का भागी होता है ।¹⁶ विष्णु धर्म सूत्र में भी कहा गया है कि पशु के नष्ट होने पर पशु का मूल्य पशुपाल स्वामी को दे ।¹⁷ ऋ के अनुसार यदि पशु का हरण चोर करले और चरवाहा उसकी सूचना शीघ्र ही स्वामी को दे देता है अथवा पशु स्वयं मर जाता है चरवाहा उस पशु के कान, चूड़ा, पूँछ आदि के बाल, मूत्र स्थान, नर्से,

4- नष्टं विनष्टं कृमिभिः स्वहतं विषमे मृतम् ।

हीनं गुरुष्कारेण प्रदद्यात्पाल एव तु ॥

ऋ० 8/232

5- गोषः क्षीरं भूतो यस्तु स दुह्याददशतो वराम् ।

गोस्वाम्यनुमते भूतः सा स्वात्पालेभूते भूतिः ॥

ऋ० 8/231

6- अवल्यय पशून् मारणे नाग्ने वा स्वाभिभ्योऽवसृजेत् ।

आप० धर्म सू० 2/2/28/6

7- विनष्ट पशु मूल्यं च स्वाभिने दद्यात् ।

विष्णु धर्म सू० 5/137-138

चर्बी आदि दिया दे और स्वामी को उसकी लाश तौंच दे तो वह पशु का देनदार नहीं होता ।⁴⁸ यदि बकरी और भेड़ भेड़ियों के द्वारा घेर लिए जाने पर चरवाहा बचाने के लिए न जाये और भेड़िया उन्हें जबरदस्ती मान् जाये तो चरवाहे पर उसका दोष होगा ।⁴⁹ यदि भेड़ बकरियों को चरवाहे ने सम्भाल कर रखा है और वे वन में झुण्ड बनाकर चर रही हों और अचानक भेड़िया उछल कर उन्हें मार जाये तो वहाँ चरवाहा दोषी नहीं होगा ।¹⁰¹ कुछ पशुओं के प्रति हमारी कोमल भावनार भी होनी चाहिए जैसे बच्चा देने के दश दिनों के भीतर की गाय, बेल । तांड । अगवों, हाथियों, देवों और पूर्ण पुरुषों के सम्मान में छोड़े गये पशु, अरक्षित तथा घायल पशु, उन्हें दण्ड नहीं देना चाहिए तथा उनके स्वामियों को भी दण्ड नहीं देना चाहिए ।¹¹¹

8- विमुष्य तु हृतं चौरैर्न पालोदातुमर्हति ।

यदि देशे च काले च स्वामिः स्वस्य गतति ॥

कर्णौ चर्म च बालाश्च बर्तितं स्नायुं च रोजनाम् ।

पशुषु स्वामिनां दयान्मृतेष्वह, कानि दक्षिते ॥

मनु0 8/233-234

9- अजा विके तु संरुद्धे वृकेः पाले त्वमायति ।

यौ प्रसह्य वृको हन्त्यात्पाते तत्किंलिष्य भवेत् ॥

मनु0 8/235

10- तातां चेद्वरुदानां चरन्तीनां मिथो वने ।

यामुत्प्लुष्य वृको हन्यान्म बालस्तत्र किंलिषी ॥

मनु0 8/236

11- ग्राम देववृषा वा अनिर्दशाहा वा धेनुर्लक्षणो गोवृषाश्चादण्डयाः ॥

कौटि0 शा0 3/10

अनिर्दशाहा गां हृतो वृषान्देवपशूस्तथा ।

तपालान्वा विपलान्वा न दण्ड्यान्मनुरब्रवीत् ॥

मनु0 8/242

महोक्षोत्प्लुष्यश्चः सृष्टिकागन्तुकादयः ।

पालो येषां न ते मोघ्या देवराजपरिप्लुताः ॥

याज्ञ0 2/163

सीमा विवाद =====

१४४ सीमा विवाद अतिथ्याचीनकाल से विवाद पद के रूप में मान्य रहा है । धर्मशास्त्रकारों ने इसका बहुत वर्णन किया है । मनु ने सीमा को निश्चित करने के लिये लिखा है कि राजा को प्रेषाद्विष कि वह सीमा को निश्चित करने के लिए सीमा पर वृक्ष लगाये जैसे - बड़, पीपल, द्राक, सेमल, ताल, ताड़वृक्ष तथा दूध वाले वृक्ष, झाड़ वाले पीपों, अनेक प्रकार के बाँस, वृक्ष, सेम की बेल तथा भूमि पर फैलने वाली लताएँ, तरकण्डे और मालती बाँधे के झाड़ों को सीमा पर लगायें, ऐसा करने से सीमा नष्ट नहीं होती है ।¹¹ नारद ने मनु के सीमाविवाद को उक्त सम्बन्धी झाड़ों के अर्थ में लिया है तथा उसे क्षेत्र विवाद कहा है तथा इसके अन्तर्गत बाँध, खेतों की सीमा उपजाऊ एवं अनुपजाऊ खेत के झाड़ों को सम्मिलित किया है ।¹² याज्ञवल्क्य ने सीमा निर्धारण में मनु के मत

- 1- सीमावृक्षांश्च कुर्वीत न्यग्रोधाश्वत्थकिंशुकान् ।
शाल्मलीन्ताल तालांश्च क्षीरिण्यथैव पादवान् ॥
गुल्मान्येक्ष्मश्च विविधाच्छमी वल्मीकस्तानिच ।
शरान्कुञ्जकगुल्मांश्च तथा सीमा न नश्यति ॥

मनु 8/246-247

- 2- सेतु केदार मयादि विवृष्टा कृष्ट निश्चये ।
क्षेत्राधिकारो यस्तु स्याद्विवादः क्षेत्रस्तु तः ॥

नारद 14/1

का समर्थन करते हुए कहा है कि गाँव या क्षेत्र की सीमा के विवाद से सामन्ति, वृद्ध पुरुष, चरवाहे, सीमापट्ट के क्षेत्र जोतने वाले, वनचारी, ऊँची भूमि, कोयला, भूसा, वृद्ध, तेतु, चींटियों की बाम्बी, गहड़े, हड्डियाँ, पत्थर आदि से चिन्हित करके सीमा का निर्धारण करना चाहिए ।¹³¹ यदि सीमा/विवाद हो जाये और सीमा चिन्हों को देखने पर भी सटीक हो जाये तब साक्षियों के प्रमाण से सीमा विवाद का निर्णय राजा करे । सीमा के विषय में साक्षियों का अभाव हो तो समीप गाँव के प्रतिष्ठित व्यक्ति राजा के सामने पक्षमात रहित भाव से सीमा का निर्णय करें ।¹⁴¹ याज्ञवल्क्य ने कहा है कि उसी गाँव के चार, आठ या दस ग्रामवासी सीमा निर्धारण करें ।¹⁵¹ सीमा विवाद के निर्णय के विषय में कौटिल्य ने कहा है कि सीमा विवाद का दोनों व्यक्ति

3- सीसो विवादे क्षेत्र्य सामन्ताः स्वविरादयः ।

गोषाः सीमा कृषाणा ये त्वं च वन गोचराः ॥

नयेयुरेते सीमानं स्थलाङ्गारतुष्टुमैः ।

सेतुवल्मीकनिम्नातिथ्यैत्थापेक्ष्यतक्षिताय ॥

याज्ञ० 2/150-151

4- यदि संशय एव स्यात्सिद्धगानामपि दशैः ।

साक्षि इत्यय एव स्यात्सीमाविवादविनिर्णयः ॥ मनु० 8/253

साक्ष्याभावे तु चत्वारो ग्रामाः सामन्तवातिनः ।

सीमाविनिर्णयं कुर्यः प्रयत्ना राजतन्निधौ ॥ मनु० 8/258

5- सामन्तावा समग्रामाश्चत्वारोऽष्टौ दशपि वा ।

रक्तवत्सनाः सीमां नयेयुः क्षितिधारिणः ॥

याज्ञ० 2/152

गांधों के पाँच या दस निकटगृहवासी व्यक्ति निर्णय करें ।¹⁶¹ खेत, कुआँ, तालाब, बगीचा और घर की सीमा के चिन्ह का निर्णय उस गाँव के निवातियों के साक्ष्य पर ही किया जाये ।¹⁷¹ जो मनुष्य खेतों के बीच में कनी हुई भेड़ को तोड़ते हैं, सीमा को पार करते हैं और धमकी देकर खेत छीन लेते हैं उन पर क्रमशः अधम, उत्तम और मध्यम साक्ष्य का दण्ड लगाना चाहिए ।¹⁸¹ मनु ने भी इस प्रकार का अपराध करने वालों के विषय में कहा है यदि कोई भ्रम दिखाकर घर, तालाब, बगीचा अथवा खेत का हरण करे तो राजा उस पर पाँच सौ पणों का दण्ड करे । यदि अनजाने में अधिकार करते तो दो सौ पणों का दण्ड करे ।¹⁹¹

6- सीमाविवादं ग्रामयोः स्थितान्ता पंचग्रामी दशग्रामी
वा तैतुभिः स्याद्वरेः कृत्रिमेवा कुर्यात् ।

कोटिशा 3/9

7- ^{अथ न 51-}
~~क्षेत्रमन्तः~~ गणानामारामस्य गृहस्य च ।

सामन्त प्रत्ययो प्रमेहे ज्ञेयः सीमातेतु विनिर्णयः ॥

मनु 8/262

8- मया दायः ~~प्रमेहे~~ च सीमातिक्रमणे तथा ।

क्षेत्रस्य हरणे दण्डा अधोत्तममध्यमाः ॥

याज्ञ 2/155

9- गृहं तडागमारामं क्षेत्रं वा भीष्या हरन् ।

गता नि पंच दण्डयः स्यादज्ञानाद विगतो दमः ॥

मनु 8/264

वाक्यारूप्य =====

कात्यायन ने वाक्यारूप्य की परिभाषा करते हुए कहा है कि किसी के सामने हुंकार करना, खीला, अनुकृति करना, या देता उच्चारण करना जो लोक द्वारा गृहीत माना जाये, उसे वाक्यारूप्य कहते हैं।¹¹ मनु ने भी वाक्यारूप्य का वर्णन किया है कि अब मैं वाक्यारूप्य अर्थात् कठोर और दुष्ट वचन बोलने पर निर्णय करूँगा।¹² नारद ने वाक्यारूप्य का अर्थ इस प्रकार किया है कि वाक्यारूप्य वह है जो किसी देश, जाति, कुल आदि के विषय में उच्च स्वर में गाली के रूप में कहा जाये।¹³ मनु के अनुसार यदि ब्राह्मण को क्षत्रिय कठोर या दुष्ट वचन कहे तो उस पर 100 पण दण्ड, ब्राह्मण को क्षत्रिय कठोर वचन कहे तो उस पर 150 पण और यदि शुद्र ब्राह्मण को कठोर वचन कहे तो उसे शारीरिक दण्ड

1- हुंकारः कात्तर्न चैवलोक यच्च विगृहीतम् ।

अनुकृत्यादनुकृत्याद वाक्यारूप्यं विनिर्णययन् तदुच्यते ॥

मनु० ४/४/२
कात्या० ७६८ अ० २, पृ० ६।

2- अत उच्चैर् प्रवक्ष्यामि वाक्यारूप्यं विनिर्णययम् ॥

मनु० ४/२६६

3- देश जातिकुलादीनामाक्रोशं न्यङ्गं तथुक्ताम् ।

यदयः प्रतिकूलार्थं वाक्यारूप्यं तदुच्यते ॥

नारद० १५/१

मिलता है।¹⁴ ब्राह्मण भी किसी दूसरे वर्ग वाले को कठोर वचन नहीं कह सकता। यदि ब्राह्मण किसी को कठोर वचन कहता है तो वह भी दण्ड का भागी होता है। यदि ब्राह्मण क्षत्रिय, वैश्य और शूद्र को कठोर वचन कहता है तो उसे क्रमशः 50, 25 और 12 पण दण्ड देना होता है।¹⁵ कौटिल्य के अनुसार यदि कोई अन्धे को अन्धा और लंगड़े को लंगड़ा कहे तो ऐसे अपराध करने पर उसे 3 पण देना है। यद्यपि ये सत्य वचन हैं फिर भी अज्ञ दण्ड अनिवार्य है।¹⁶ याज्ञवल्क्य के अनुसार जो राजा का अहित कहे और उसकी निन्दा करे तो उसकी जीभ काट ली जाए तथा उसका सब कुछ छीन कर राज्य से बाहर निकाल दें।¹⁷ अग्रिय सत्य भी नहीं बोलना चाहिए जैसे अन्धे को अन्धा कहना ऐसा बोलने पर

4- शतं ब्राह्मणमाक्रुष्य क्षत्रियो दण्डमर्हति ।

वैश्योऽप्यर्धशतं दे वा शूद्रस्य वधमर्हति ॥

मनु 8/267

5- पंचाशद् ब्राह्मणो दण्ड्यः क्षत्रियस्याभिज्ञाने ।

वैश्येऽर्धपञ्चाशच्छूद्रे वा दण्डो दमः ॥

मनु 8/268

6- काण खंजादिभिरुक्तये त्रिपणो दण्डः ।

कौटिल्या 3/18

7- राज्ञोऽनिष्टवक्तारं तस्यैवाक्रोशकारिणम् ।

तन्मन्त्रस्य च भेतारं क्षित्त्वा जिह्वां प्रघातयेत् ॥

याज्ञ 2/302

ऋ के मत में दण्ड का भागी होता है । ऋ ने कहा है जो ऋष्य कागे को कागा और लण्डे को लण्डा तथा दूतरे इस प्रकार के विकलांगों को वैता ही कहे तो वह कम से कम एक कार्षाण दण्ड का भागी होता है ।¹⁸¹ याज्ञवल्क्य के अनुसार यदि कोई अलीन आक्षेप करे जैसे मैं तुम्हारी बहन या माँ का अभिन्ता । वारा हूँ ऐसे ऋष्य से राजा 25 पण दण्ड ले ।¹⁹¹ यदि कोई माता, पिता, पत्नी, भाई, पुत्र और गुरु इन पर दोष लगाकर निन्दा करे और गुरु को रास्ता न दे तो उस पर भी पण होना चाहिए ।¹¹⁰¹

दण्ड पारुष्य =====

कौटिल्य ने स्पर्श करना, धमकी देना या कितनी को आहत करने के कर्म को दण्ड पारुष्य कहा है ।¹¹¹ दण्ड पारुष्य का अर्थ कठोर दण्ड मारना

8- कार्गं वाप्यध्वा ऊर्ममर्त्यं वाऽपि यथापिध्म ।
तथ्येनापि ब्रवन्दाप्यो दण्डं कार्षापणावरम् ॥

ऋ० 8/274

9- अभिन्तादिम भगिनीं मातरं वा त्वेति ह ।
ऋमन्तं दापयेद्वाजा पंचविंशतिकं दमम् ॥

याज्ञ० 2/205

10- मातरं पितरं जायां भ्रातरं तनयं गुरुम् ।
आधारयन्ततं दाप्यः पन्थानं चाददद् गुरोः ॥

ऋ० 8/275

1- दण्डपारुष्यं स्पर्शनमवगूर्णनं प्रहतमिति ।

कौटिल्या० 3/19

अथवा दण्ड से कठोरतापूर्वक मारपीट करना है ।¹²¹ बृहस्पति के अनुसार हाथ, पत्थर, लाठी, राख, पक, धूलि या हथियार से मारना या चोट पहुंचाना दण्डपारुष्य कहलाता है ।¹³¹ मनु के अनुसार मनुष्यों एवं पशुओं को दुःख के लिये यदि अधिक प्रहार किया है तो अधिक दण्ड और यदि कम प्रहार किया है तो कम दण्ड देना चाहिए ।¹⁴¹ यदि कोई किसी के अंग को हानि पहुंचाता है, अंग कट जाए या टूट जाये अथवा घाव होने पर रक्त बह जाये तो जब तक वह पूर्णरूप से स्वस्थ नहीं होगा तब तक उसकी औषधि और आदि का व्यय मारने वाले को दण्ड के रूप में वहन करना होता है । साथ ही यदि उचित हो तो उसे पूर्ण दण्ड भी हो ।¹⁵¹

2- अत उच्यते प्रवक्ष्यामि दण्डपारुष्य निर्णयम् ॥

मनु 2/278

3- हस्तपाषाण तमुर्ध्वमकर्दमपाशुभिः ।

आयुधैश्च प्रहरणं दण्डपारुष्यमुच्यते ॥

बृह 1 वि० रत्ना 70 पृ० 2591

4- मनुष्याणां पशूनां च दुःखाय प्रवृत्तेः तति ।

यथा-यथा महद् दुःखं दण्डं कुर्यात्तथातथा ॥

मनु 8/286

5- अङ्गमपीडनायां च दण्डोऽपि नित्योत्तया ।

तमुत्थानव्ययं दाप्यः सर्वदण्डमथापि वा ॥

मनु 8/287

याज्ञवल्क्य ने भी मनु के ही सिद्धान्त का समर्थन किया है कि यदि कोई मारपीट कर चोट पहुँचावे तो उसकी दवा आदि का व्यय चोट पहुँचाने वाले को ही वहन करना है ।¹⁶¹ याज्ञवल्क्य ने लिखा है कि यदि कोई मनुष्य उन्मत्त या पागल होने पर या अवश किति पर कीचड़, मिट्टी, धूँक या मलमूल पेंक दे वह दण्डित नहीं होता ।¹⁷¹ मनु के अनुसार यदि कोई जाने या अनजाने में किसी की वस्तुओं को नष्ट कर दे तो अवराधी मालिक को वस्तु वा धन दे और राजा को दण्ड के रूप में उसके बराबर धन दे ।¹⁸¹

स्तेय

स्तेय का अर्थ होता है चौर्य कार्य । चौर्य कार्य भारत में बहुत प्राचीन है । ऋग्वेद में भी अनेक स्थलों पर तत्कर चौर का वर्णन है । ऋग्वेद में स्तेय का अर्थ गाय चुराने वाला है ।¹¹¹ चौर तत्कर गुप्त धनों को

6- दुःख्युत्पादयेत्तु त समुत्थानजं व्ययम् ।

दाप्यो दण्डं च यो यस्मिन्कलहे समुदाहृतः ॥

याज्ञ0 2/222

7- मोहमदादिभिरदण्डनम् । याज्ञ0 2/214

8- द्रव्याणि हित्याद्यो यस्य ज्ञानतोऽज्ञानतोऽपि वा ।

त त्वयोत्पादयेत्तुष्टिं राज्ञे दद्याच्च तत्तमम् ॥

मनु0 8/288

1- अ० 6/28/7

जानता है । ऋग्वेद में आया है कि पूषा मार्गों की रक्षा करता है और गुप्त धर्मों को जानता है जैसे कोई तत्कर जानता हो ।¹²¹ मनु ने कहा है कि राजा चोरों को रोकने के लिये अधिक से अधिक प्रयत्न करे । चोरों पर नियन्त्रण होने से राजा का यश बढ़ता है तथा राष्ट्र की वृद्धि होती है ।¹³¹ चोरी करने पर दण्ड के विषय में मनु ने लिखा है कि कुलीन पुरुषों और विशेष रूप से स्त्रियों का हरण करने पर तथा हीरे आदि रत्नों की चोरी करने पर शारीरिक दण्ड देना चाहिये ।¹⁴¹ मनु ने कहा है कि राजा चोरी का माल और सैन्य मारने आदि के औजार आदि प्रमाण उपलब्ध होने पर ही चोर को दण्डित करे प्रमाण के बिना दण्डित न करे ।¹⁵¹ याज्ञवल्क्य ने भी मनु के सिद्धान्त का ही समर्थन

2- पथः सकः षीषाय तत्करो यथा सध वेद निधीनाय ।

मनु 8/2916

3- परमं यत्नमातिष्ठेत्स्तेनानां निग्रहे नृपः ।

स्तेनानां निग्रहादन्य यशो राष्ट्रं च वर्धते ॥

मनु 8/302

4- पुरुषाणां कुलीनानां नारीणां च विशेषतः ।

मुडयानां चैव रत्नानां हरणे वध्यमर्हति ॥

मनु 8/323

5- न होद्वेन विना चोरं घातयेद्दार्मिको नृपः ।

तद्वेदं तोषकरणं घातयेदविचारयन् ॥

मनु 9/279

दिया है ।¹⁶ मनु के अनुसार जितका जितना ज्ञान और प्रतिष्ठा अधिक हो उसे अपराध में उतना ही अधिक दण्ड मिलना चाहिए । यदि ब्रह्म पियेकी होकर चोरी करे तो उसे आठ गुणा, वेश्य को तोलठ गुणा, क्षत्रि क्षत्रिय को बत्तीस गुणा तथा ब्राह्मण को चौंसठ गुणा अथवा तो गुणा, अथवा एक तो अठ्ठाईस गुणा दण्ड होना चाहिए ।¹⁷ मनु ने ब्राह्मण को प्राण वध का दण्ड न देने को कहा है । यदि ब्राह्मण सब पाषों में स्थित हो तो उसे समस्त धन सहित शरीर हाथि किये बिना देश से बाहर निकाल देना चाहिए, प्राण वध का दण्ड नहीं देना चाहिए ।¹⁸ जो चोरों को आश्रय दे अर्थात् भोजन, वस्त्र तथा

6- मृहीतः शङ्कु-या चौर्ये नात्मानं चे दिशोध्येत ।

दाशयित्वा हतं द्रव्यं चौरदण्डेन दण्डयेत् ॥

मानु 2/269

7- अष्टाबाधेन ब्रह्मस्य हतेये भ्रमति किल्बिषम् ।

षोडशेन तु वेश्यस्य द्वाविंशत्क्षत्रियस्य च ॥

ब्राह्मणस्य चतुः षष्टिः पूर्णं वा ऽपि शतं भवेत् ।

द्विगुणा वा चतुः षष्टिस्तद्विषगुणविधिः सः ॥

मानु 8/337-338

8- न जातु ब्राह्मणं हन्यात्तर्षयापेक्षया चि स्थितम् ।

राष्ट्रीदेनं बहिः कुर्यात्तमग्रजन्ममक्षयम् ॥

मानु 8/380

स्थान दे उन्हें भी चोरों के समान ही राजा दण्ड दे ।¹⁹¹ राजा चोरों को अग्नि, भोजन, वस्त्र स्थान आदि देने वाले तथा चोरी का माल रखाने वालों को भी चोर की तरह ही दण्डित करे ।¹¹⁰¹ याज्ञवल्क्य ने भी मनु के ही मत का समर्थन लिया है ।¹¹¹¹

साहस

कितनी वस्तु को स्वामी के सामने जलात्कार पूर्वक जो चोरी आदि कर्म किया जाता है वह साहस ।डाका डालना। कहलाता है ।¹¹¹ मनु ने कहा है कि साहस अर्थात् जलात्कार करने वाला पुरुष अतीव पापी होता है ।¹²¹ कौटिल्य ने ~~इह/ह/मि/सहस/अर्थ/मन्त्र~~

9- ग्रामेष्वपि च ये केचिद्यौराणां भक्तादायकाः ।

भाण्डावकाशदायकैश्च त्वन्निदानपि घातयेत् ॥

मनु 9/271

10- अग्निदान्भक्तादायकैश्च शस्त्रावकाशदान् ।

तन्निधातृश्च मोक्षय हन्याच्योरभिशेखरः ॥

मनु 9/278

11- भक्तायकशिग्न्युदक मन्त्रोपकरण व्ययान् ।

दत्त्वा चौरस्य वा हन्तुर्जनिता दम उत्तमः ॥

याज्ञ 2/276

1- स्यात्साहसं त्वन्वयवत्प्रसङ्गं कर्म यत्कृतम् ॥

मनु 8/332

2- साहसस्य नरः कर्ता विद्वेष्टः पापकृताम् : ॥

मनु 8/345

भी उपर्युक्त मत का प्रतिपादन किया है ।¹³ याज्ञवल्क्य ने ताहत की परिभाषा देते हुए कहा है - सामान्य वस्तु के क्लृप्त अपहरण को ताहत कहते हैं । उसके लिए उस वस्तु के मूल्य का दण्ड होता है अपराध स्वीकार न करने पर उसका चौगुना दण्ड होता है ।¹⁴

ताहतिक मनुष्य की चाहे राजा के साथ मिलता हो या राजा को यह बहुत धन भी दे तब भी राजा को उसे बन्धन-छेदन किये बिना नहीं छोड़ना चाहिए ।¹⁵ बृहस्पति के मतानुसार यदि कोई व्यक्ति किसी की हत्या करें उनमें जो मर्मप्रहारक होता है उसी को हत्या का दण्ड मिलता है ।¹⁶

3- ताहतमन्थयवत् प्रतर्कर्म । निरन्वये हत्येममव्ययने च ।
कौटिल्या० ३/१७

4- सामान्य दण्डप्रत-हरणात्ताहतं स्मृतम् ।
तन्मूल्याद् द्विगुणोदण्डो निहन्ते तु चतुर्गुणः ॥
याज्ञ० २/२३०

5- न म्रिाकारणाद्वाजा विपुलादा धनागमात् ।
समुत्तुजेत्ताहतिकान्तर्वभूतार्थेषावहान् ॥
मनु० ८/३५७

6- एकस्य बहवो यत्रप्रहरन्ति रूषान्विताः ।
मर्म प्रहारको यस्तु घातकः स उदाहृतः ॥

बृह० । वि०रत्ना० पु० ३७३१

स्त्री संग्रहण

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स्त्री संग्रहण का अर्थ होता है परस्त्री के साथ नियम विरुद्ध मेलन भाव । याज्ञवल्क्य । मिताक्षरा । स्मृति में स्त्रीसंग्रहण किसी पुरुष एवं स्त्री का सम्भोगकरना कहा गया है ।¹¹ स्मृति चन्द्रिका में इस बात को और भी स्पष्ट कर दिया गया है-परस्त्री के साथ सम्भोग को स्त्री संग्रहण कहते हैं ।¹² मनु का कथन है कि जो मनुष्य पहले परस्त्री-गमन-सम्बन्धी दोषों में अपराधी सिद्ध हो चुका हो, यदि वह स्कान्त स्थान में परस्त्री के साथ बातचीत की योजना में लगा हो तो उसे पूर्व ताहत का दण्ड मिलता है, परन्तु इसके साथ ही जो पुरुष पहले परस्त्री गमन का अपराधी सिद्ध न हुआ हो, यदि वह परस्त्री से बातचीत करता है तो वह दण्ड का भागी नहीं होता है, क्योंकि वह सदा भ्रम नहीं करता है ।¹³ नारद ने निम्न नारियों के साथ सम्भोग करना पाष

1- स्त्रीपुंसयोर्मिश्रुता भावः संग्रहणम् । मिता० । याज्ञ० 2/283

2- संग्रहणं परस्त्रिया सह पुरुषस्य सम्बन्धः ।

स्मृ० च० 2, पृ० 8

3- परस्य पहन्यापुरुषः संभाषां योजयन् रहः ।

पूर्वमाक्षारितो दोषैः प्राप्त्युयात्पूर्वताहतम् ॥

यत्त्वनाक्षारितः पूर्वमभिषेकारणात् ।

न दोषं प्राप्त्युयात् किंचिन्म हितस्य व्यतिक्रमः ॥

मनु० 8/354-355

माना है माता, । विमाता । माता की बहिन, तात, चाचा या मामा की पत्नी, पिता की बहिन, मित्र पत्नी, शिष्य पत्नी, बहिन, बहिन की सखी, पुत्र वधू, पुत्री, गुरुवती, तबोत्रा, शरणागता, रानी, तन्यातिनी, दूध पिलाने वाली, साध्वी एवं उच्च जाति की स्त्री ।¹⁴ मनु ने स्त्री-संग्रहण के अन्तर्गत निम्न विधियों को माना है - स्कृतादे को आकर्षित करने के लिये माता सुगन्ध आदि हृणारिक वस्तुओं का आदान प्रदान करना, विलास क्रीडार्थ । हंती मखौल छेड़खानी आदि । आभूषण और कपड़ों आदि का स्पर्श, साथ मिलकर खाट आदि घर बैठना ।¹⁵ याज्ञवल्क्य ने प्रव्रजिता-गमन पर केवल 24 पणों का दण्ड लगाया है । कौटिल्य ने भी इसी मत को ही प्रबल प्रतिपादित किया है ।¹⁶ मनु ने व्यक्तिवारी पुरुष और स्त्री दोनों को ही मृत्युदण्ड के

4- माता मातृष्वताऽवयव-विनश्योत्कर्तनं तस्य
नान्यो दण्डो विधीयते ।

नारद 15/73-75

5- उपचार क्रिया केलिः स्पर्शो भूषणात्तस्य ।

सद्वद्व्यासनस्य चैव सर्वं संग्रहणं स्मृतम् ।।

मनु 8/357

6- चतुर्विंशतिको दण्डस्तथा प्रव्रजितागमे ।

याज्ञ 2/293

प्रव्रजितागमे चतुर्विंशति पणो दण्डः ।

कौटिल्य 4/13

विधान का वर्णन करते हुए कहा है कि जो स्त्री अपनी जाति गुण के अभिमान से पति को छोड़कर व्यभिचार करे उसे बहुत से स्त्री पुरुषों के सामने कुत्तों से मरवा डालना चाहिये तथा पुरुष के लिये भी ऐसे कठोर मृत्यु दण्ड का विधान किया है कि जो पुरुष अपनी स्त्री को छोड़कर परस्त्री गमन करे उस पापी को लोहे के तपे हुए बलंग पर तुलाकर भस्म कर देना चाहिये ।¹⁷¹ मनु ने जहाँ इतने कठोर मृत्यु दण्ड का विधान किया है वहीं कुछ न्याय संगत बात भी कही है कि यदि कोई पुरुष अपनी ही जाति की अविवाहित स्त्री के साथ सम्भोग करे तो उसे दण्ड नहीं मिलना चाहिये अपितु पिता की स्वीकृति से उचित धन देकर उसके साथ विवाह कर लेना चाहिये ।¹⁸¹

मनु ने जहाँ परस्त्री से बात करने पर भी दण्ड का विधान किया है वहीं पर नाचने गाने वाले ।चारण आदि। की स्त्रियों और

7- भर्तारं लङ्घयेया तु स्त्री जातिशुद्धयि ता ।

तां श्वश्रुः आदयेद्वाजा संस्थाने बहु संश्रिते ॥

पुमान्तं दाहयेत्पार्ष्ण्यं श्रुते तप्त आयते ।

अयादधुशय काष्ठानि तत्र दहयेत् प्राग्गृहं पापकृत ॥

मनु 8/371-372

8- शुक्लं दद्यात्तेवमानः समाभिर्चोत्पिता यदि ॥

मनु 8/366

अपनी पत्नी की वेश्यावृत्ति पर जी विका चलाने वालों की स्त्रियों पर यह नियम लागू नहीं होता क्योंकि वे तो अपनी स्त्रियों को स्वयं सजाते हैं और सुषकर संभोग के लिये भेजते हैं ।¹⁹¹

स्त्री पुंर्धर्म =====

स्त्री पुंर्धर्म का अर्थ है पति-पत्नी का धर्म । मनुस्मृति में स्त्रीपुंर्धर्म का विशद वर्णन है । स्त्रीपुरुष के मुख्य धर्म का वर्णन करते हुए मनु ने कहा है कि आश्रम पति-पत्नी में कितनी प्रकार के धर्म का उत्पन्न और विच्छेद न होने पार यही तक्षि में स्त्री और पुरुष का मुख्य धर्म है ।¹¹¹ इसके लिये स्त्री पुरुष दोनों के ही कुछ कर्तव्य हैं । कुछ पुरुष के कर्तव्य हैं तथा स्त्री के भी । सर्वप्रथम तो पुरुष को अपनी पत्नी की कुसंग से रक्षा करनी होती है, क्योंकि रेता न होने पर स्त्री पति तथा पिता दोनों के कुलों के शोकांततप्त कर देती है ।¹²¹

9- नैष चारण दारेषु विधिर्मात्मोपजीविषु ।

तज्जयन्ति हिते नारीर्निगूह्याश्चारायन्ति च ॥

मनु 8/362

1- अन्योन्यत्याग्यभिवारो भेदावरणान्तिकः ।

रक्ष धर्मः समासेन देयः स्त्री पुंसयोः परः ॥

मनु 9/101

2- तूक्ष्मेभ्योऽपि प्रसिद्धे मेभ्यः स्त्रियो रक्षया विशेषतः ।

दयोर्हि कुलयोः शोकमापहेयुररक्षिताः ॥

मनु 9/5

पत्नी की रक्षा अवश्य होनी चाहिए यदि पति दुर्बल भी क्यों न हो, अर्थात् दुर्बल पति भी पत्नी की रक्षा करते हैं ।¹³ स्त्री को दूषित करने वाले छः दुर्गम मनु ने निम्न कहे हैं - मद्य, भाग आदि मादक द्रव्यों का पीना, दुष्ट पुरुषों का संग, पतिवियोग, अकेली इधर उधर फिरती रहना तथा पराये घर में जाकर शयन करना या बात करना ।¹⁴ इन बुराईयों से पत्नी को पति बचावे । स्त्री की स्वतन्त्रता पर भी विवाद ही रहा है । मनु ने जहाँ एक ओर कहा है कि स्त्री स्वतन्त्र रहने के योग्य नहीं है, वहीं पर मनु ने कहा है कि पुरुष द्वारा घर में रोककर रखी हुई स्त्रियाँ भी सुरक्षित हैं अर्थात् बुराईयों से नहीं बच सकती । जो अपनी रक्षा स्वयं करती है वही बुराईयों से सुरक्षित रहती है ।¹⁵ मनु का यही सिद्धान्त न्याय

3- यतन्ते रक्षितुं भार्या भर्तारो दुर्बला अपि ।

मनु 9/6

4- पानं दुर्जन संगः पत्या च विरहाऽऽत्मनः ।

स्वप्नोऽप्य गेहवासाश्च नारीसंदृष्टानि च ॥

मनु 9/13

5- न स्त्री स्वातन्त्र्यमर्हति ॥ मनु 9/3

अरक्षिता गृहे स्त्र्याः पुरुषैराप्ता कारिभिः ।

आत्मानमात्मना यास्तु संरक्षिता सुरक्षिताः ॥

मनु 9/72

संगत है। स्त्री की कुछ स्वतन्त्रता अवश्य होनी चाहिये। पुत्रों को पैदा करना, उनका पालन करना तथा नित्य शुद्धकार्य करना ये सभी स्त्री के धर्म हैं। सन्तान उत्पन्न करने में स्त्री ऊँच के तुल्य होती है तथा पुरुष बीज के तुल्य होता है।¹⁶ मनु के अनुसार पुरुष को परस्त्री गामी नहीं होना चाहिए, मनु ने कहा है कि दीर्घायु चाहने वाले व्यक्ति को कभी भी परस्त्री में अपना बीज नहीं बोना चाहिए, अर्थात् अपने वीर्य रूषी बीज को व्यर्थ नष्ट नहीं करना चाहिए।¹⁷ पुरुष को चाहिए कि उसकी सन्तान उत्तम हो, सन्तान की शुद्धि के लिए उसे बत्नी की इक्षा करनी चाहिए क्योंकि स्त्री जैसे पशु का सेवन करती है वैसी ही सन्तान उत्पन्न करती है।¹⁸ याज्ञवल्क्य ने लिखा है कि पुरुष अपनी ही स्त्री के साथ सम्भोग करे और अपनी ही स्त्री में लीन रहे।¹⁹ स्त्रियों का सभी को सम्मान करना चाहिए

6- क्षेप्त भूता स्मृता नारी बीज भूतः स्मृतः पुमान् ।

मनु 9/33

7- आयुष्कामेन वप्स्यस्यं न जातु परयोषिति ॥

मनु 9/41

8- यादृशं भजते हि स्त्री तुतं तूते तथापिध्य ।

तस्मात्प्रजापिशुद्वयं स्त्रियं रक्षेत्प्रयत्नतः ॥

मनु 9/9

9- यथाकामी भेदादि स्त्रीणां परमनुस्मरन् ।

स्वदारनिरासचैव स्त्रियो रक्षया यत् स्मृताः ॥

याज्ञ 1/81

याज्ञवल्क्य ने भी कहा है कि पति-भाई, पिता, जाति के लोग, तात, स्वतुर, देवर और बन्धु वर्ग आभूषण, वस्त्र एवं वस्त्र आदि से स्त्रियों का सम्मान करे ।¹¹⁰ स्त्री की स्वतन्त्रता के विषय में मनु एवं याज्ञवल्क्य का एक ही मत है, उन्होंने कहा है कि स्त्री को कभी भी स्वतन्त्र नहीं रहने देना चाहिए, कुमारी अवस्था में पिता रक्षा करे, विवाहिता होने पर पति तथा वृद्धावस्था में पति के न होने पर पुत्र रक्षा करे, स्त्रियों को कभी भी स्वतन्त्र नहीं रहने देना चाहिये ।¹¹¹ स्त्रियों में एक विशेष अंगुण होता है कि वे चुपके से गुप्त रूप से थोड़ा-थोड़ा धन संग्रह कर लेती हैं तथा उसे अपने विशेष उपयोग में लाती हैं । मनु ने इतका निषेध किया है कि स्त्री परिवार से चुपके से अपने लिये धन संग्रह न करे और अपने धन में से भी पति की आज्ञा के बिना कर्ष न करे ।¹¹²

10- भर्तृभ्रातृपितृणातिश्वश्रूचतुरदेवरेः ।

बन्धुभिन्नय स्त्रियः पूज्या भूषणाच्छादनागमैः ॥

याज्ञ0 1/82

11- पिता रक्षति कौमोर भर्ता रक्षति योवने ।

रक्षन्ति स्वविरे पुत्रा न स्त्री स्वातन्त्र्यमर्हति ॥

मनु0 9/3

रक्ष्येत्कन्यां पिता दिनर्त्ता पतिः पुत्रास्तु वार्धके ।

अभावे ज्ञातयस्तेषां न स्वातन्त्र्यं ^{स्य} ~~स्त्री~~ यित्तिश्रवाः ॥

याज्ञ0 1/85

12- न निर्हारं स्त्रियः कुर्युः कुटुम्बाद बहुभ्यगात् ।

स्वकादपि च पितृताहि स्वस्य भर्तृनाहया ॥

मनु0 9/199

दाय भाग

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दाय शब्द अति प्राचीन है । दाय का वर्णन वेदों में भी आया है ।

ऋग्वेद में दाय शब्द को "वर्तीयत से युक्त" अर्थ में लिखा है ।¹¹

तैत्तिरीय संहिता में दाय शब्द पैतृक सम्पत्ति के अर्थ में आया है ।

नाभानेदिष्ठ की कथा में आया है कि मनु ने अपना सारा दाय अपने पुत्रों में बाँट दिया । यहाँ दाय का अर्थ धन है ।¹² तैत्तिरीय

संहिता के एक अन्य मन्त्र में आया है किसे अपने बड़े पुत्र को धन से

प्रतिष्ठित करते हैं ।¹³ अथर्ववेद में सोम को ब्राह्मणों का दायद

कहा है ।¹⁴ मनु ने कहा है कि माता-पिता के मरने के बाद सब भाई,

एकत्रित होकर पिता की सम्पत्ति को बराबर बाँट लें । माता-पिता

के जीवित रहते हुये वे उस धन के अधिकारी नहीं बन सकते ।¹⁵

1- ददातु वीरं शतदायमुक्थ्यम् ।

श्रु 2/32/4

2- मनुः पुत्रेभ्यो दायं व्यभजत् ।

तैत्तिरीय 3/1/9/4

3- तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति ।

तैत्तिरीय 2/5/2/7

4- सोमो ह्यस्य दायद इन्द्रो ऋष्याभिराश्रितयाः ।

अथर्व 5/18/6

5- अयं पितृभ्य मातृभ्य तमेभ्य भ्रातरं समम् ।

भोजन्यैतुर्कं रिक्थमनीशारते हि जीवतोः ॥

मनु 9/104

इससे स्पष्ट है कि पुत्रों को जन्म से सम्पत्ति का अधिकार नहीं होता, परन्तु याज्ञवल्क्य इस मत से सहमत नहीं है उन्होंने पुत्र को जन्म से ही सम्पत्ति का स्वामी माना है ।¹⁶ मिताक्षरा ने सम्पत्ति विभाजन की परिभाषा देते हुए कहा है कि जहाँ संयुक्त स्वामित्व हो वहाँ सम्पूर्ण सम्पत्ति के भागों की निश्चित व्यवस्था ही विभाग है ।¹⁷ सम्पत्ति विभाजन के विषय में एक मत नहीं है मनु पिता की मृत्यु के बाद सम्पत्ति विभाजन मानते हैं परन्तु ऋग्वेद में वृद्ध पिता की सम्पत्ति के विभाजन का वर्णन करते हुए कहा गया है हे अग्नि, लोग तुम्हें बहुत स्थानों में कई प्रकार से पूजित करते हैं और तुमसे सम्पत्ति उसी प्रकार ग्रहण करते हैं जिस प्रकार वृद्ध पिता से ।¹⁸ मनु के अनुसार सम्पत्ति विभाजन कोई आवश्यक नहीं है यदि पिता की मृत्यु के बाद सभी भाई सम्मिलित रहना चाहे तो बड़ा पुत्र सम्पत्ति का अधिकारी हो जाता है तथा शेष ५ सभी भाई जैसे पिता के साथ

6- तत्र स्वात्तदृशं स्वाम्यं पितुः पुत्रस्य चैव हि ॥

याज्ञ० २/१२।

7- विभागो नाम द्रव्यं समुदायं विषयागाम्यैकस्वाम्यानां तदेकदेशेषु

व्यवस्थापनम् ।

मिताक्ष० । याज्ञ० २/११४

8- गोषु प्रशस्तिं घनेषु द्रिषि भरन्त विश्ये बलिं स्वर्गः ।

चित्पा नरः पुत्र्या समर्थं पितुर्न ज्ये विवेदोभरन्त ॥

श० १/१०/५

रहते थे उसी प्रकार बड़े भाई के साथ रहकर जीवन यापन करें ।¹⁹¹
 कुछ वस्तुओं का विभाजन नहीं होता जो जिसके पास हैं वे उसी के
 पास रह जाती है जैसे वस्त्र, वाहन, आभूषण, पशुपक्ष, जल, त्रिव्यां
 । दातव्यां कल्याण साधक पुरोहित और मार्ग आदि ।¹¹⁰¹ कौटिल्य
 का कथन है कि कुछ आचार्य कहते हैं कि दरिद्र लोग जलपात्रों को भी
 बाँट लेते इस कथन को कौटिल्य नहीं मानते ।¹¹¹¹ यदि किसी भाई
 की विधवा जो विभाजन के समय गर्भवती रही है तो उसे भी सम्भारित
 देनी चाहिये ।¹¹²¹ पिता यदि जीवित है और उसके धन का विभाजन
 हो गया है और उसके बाद यदि कोई पुत्र उत्पन्न हो जाये तो वह पिता
 के धन को ले ले ।¹¹³¹

9- ज्येष्ठ एव तु गृहणीयात्पितृयं धनमोष्ठाः ।

शेषान्तमुपजीवेयमर्थेयं पितरं तथा ॥

मुनु 9/105

10- वस्त्रं पत्रमलंकारं कृतान्नमुदकं त्रिवयः ।

योगं क्षेत्रं प्रचारं च न विभाज्यं प्रयक्षते ॥

मुनु 9/219

11- उदपात्राण्यपि निष्किंयनाः पिभ्येरन् इत्याचार्याः ।

उलमेतदिति कौटल्यः । कौटिल्या 03/3

12- पितृविभक्ता विभागान्तरोत्पन्नस्य भागं दद्युः ।

विष्णु धर्म सू 0 17/3

13- उध्वं विभागान्जातस्तु पितृयमेव हरेदनम् ।

मुनु 9/216

कुछ शारीरिक, मानसिक तथा आचरण सम्बन्धीदुर्गुणों के कारण प्राचीन काल में दाय भाग से वर्धित रहते थे । कौटिल्य के अनुसार पाषाणारी, पतितका पुत्र नपुंसक, पागल, अन्धे और कुष्ठ रोगी ये सब धन के हितेदार नहीं होते हैं ।¹¹⁴ याज्ञवल्क्य ने भी कहा है कि नपुंसक, पतित, पतित का पुत्र वंशु, पागल, जड़, अन्धा, असाध्य रोग से ग्रस्त इनको दाय भाग नहीं मिलना चाहिए उनका भरण पोषण करना चाहिये ।¹¹⁵ मनु ने भी उपर्युक्त सभी को धन का हितेदार नहीं माना है ।¹¹⁶ अविवाहित बहनों के विवाह के लिये सभी भाई अपने शिभागों में से पृथक्-2 तक चौथाई भाग अवश्य दें । ऐसा न हरे करने पर वे पतित और निन्दनीय माने जाते हैं ।¹¹⁷ याज्ञवल्क्य ने

*4- पतितः पतिताज्याता क्लीबपचानंशः ।

जडैर्मत्तान्धकुष्ठिनश्च ।

कौटि० अर्थशास्त्र 3/5

15- क्लीबोऽथ पतितस्तज्जः पङ्क. रुन्मत्तको जडः ।

अन्धोऽधिकित्त्य रोगाघा भर्त्तव्याः स्फुरिर्गताः ॥

याज्ञ० 2/140

16- अर्नशो क्लीबपतिता जात्यान्ध बधिरौ तथा ।

उन्मत्त जडमूकाश्च मे च केचिन्निरिन्द्रियाः ॥

मनु० 9/201

17- स्वेभ्योऽत्र यस्तु कन्याभ्यः प्रदुर्भातरः पृथक् ।

स्वात्स्वादांशव्यतुर्भाशं पतिताः स्फुरदित्तवः ॥

मनु० 9/118

भी मनु के ही इस मत का समर्थन किया है ।¹⁸ कौटिल्य ने लिखा है कि पिता अपने जीते जी विभाजन में विशेषता प्रकट न करे और न वही किसी को अकारण वंचित करे ।¹⁹

घृत और तमाहव्य

घृत और तमाहव्य की परम्परा अति प्राचीन है । धर्म शास्त्र तथा वेदों में घृत और तमाहव्य का वर्णन है । मनु ने घृत और तमाहव्य की परिभाषा करते हुए कहा है कि घृत वह छेन है जो बिना प्राणियों के छेना जाता है अर्थात् तास, पासा, कोड़ी आदि के साथ छेना जाने वाला छेन और तमाहव्य जो प्राणियों के साथ छेना जाता है जो छूट, दोड़, मुर्खों को आपस में लड़ाना, तीतर और बकरे आदि को लड़ाना ।¹¹

18- अतंकृतास्तु तंकार्या भ्रातृभिः पूर्वतंस्कृतैः ।

भगिन्यश्च निजादंशाद् दत्त्वांशं तु तुरीयकम् ॥

याज्ञ0 2/124

19- जीवज्जिगमे पिता नैकं विशेष्येत् ।

न चैककारणाग्निर्विभजेत् ।

कौटिल्या0 3/5

1- अग्राणिभिर्यत्क्रियते तल्लोके घृतमुच्यते ।

प्राणिभि क्रियते यस्तु न विज्ञेयः तमाहव्यः ॥

मनु0 9/223

जुआ खेलने वाले व्यक्तियों में चोरी की प्रवृत्ति होती है। याज्ञवल्क्य ने कहा है कि चोरों की बढचान के लिए एक व्यक्ति को घृत का प्रधान नियुक्त करना चाहिए, तमाहव्य के विषय में भी यही नियम लागू होता है। कौटिल्य ने भी ऐसा ही कहा है।¹²¹ मनु ने घृत एवं तमाहव्य का विरोध किया है तथा याज्ञवल्क्य तथा कौटिल्य ने इसका समर्थन किया है क्योंकि इनसे चोरों का पता चलता है।

कौटिल्य ने घृत पर 5 प्रतिशत शुल्क का विधान किया है और जुआ खेलने का प्रबन्ध करने वाले को जुर्माने की सामग्री, जल एवं स्थान आदि देने के उपलक्ष्य में किराया लेने की छूट दी है।¹³¹ मनु में घृत और तमाहव्य को चोरी माना है और कहा है कि राजा को चाहिए कि इसे रोकने के लिए पूर्ण प्रतिबन्ध ही लगा देना चाहिए क्योंकि ये प्रत्यक्ष रूप में होने वाली चोरी है।¹⁴¹ मनु ने तो जुआ खेलने वाले तथा जुआ

2- घृतमेकं मुखं कार्यं तत्करज्ञान कारणात् ।

एष एव विधिर्ज्ञेयः प्राणिभूते तमाहव्ये ॥

याज्ञ० 2/203

घृताध्यक्षो घृतमेकं मुखं कारयेत् ।

कौटिल्या० 3/20

3- जितद्व्यादध्यक्षः पंचकं शतमाददीत काकयक्षारलाशलाका-
वक्रयमुदकं भूमिकर्मकार्यं च । द्व्यागामाधानं विक्रयं च कुर्यात् ॥

कौटिल्या० 3/20

4- प्रकाशमेतत्तार्क्यं यद् देवनतमाहव्यौ ।

तयोर्नित्यं प्रतीघाते नृषतिर्यत्नवान्भवेत् ॥

मनु० 9/222

खिलाने वाले दोनों को कपटी ब्राह्मणों के देश में भूत कहा है ऐसे
भूतों को राजा शारीरिक दण्ड दे ।¹⁵ वेदों में भी घृत का वर्णन
है । ऋग्वेद में तो इसका विशद वर्णन है ।¹⁶

महाभारत के समापर्व में घृत का वर्णन किया गया है ।
समापर्व में युधिष्ठिर कहते हैं कि जुआ खेलने के लिये ललकारने पर वे
जुआ खेलने से हटें नहीं ।¹⁷ महाभारत को पढ़ने से ज्ञात हो जाता
है कि जुआ कितना प्रचलित था तथा यह बहुत बड़ा दुर्गम था जुआ में
युधिष्ठिर अपना सब कुछ हार गया । जुआ खेलने से अच्चे व्यक्ति भी
पथभ्रष्ट हो जाते हैं तथा बुद्धि का विनाश हो जाता है । मनुष्यों
की नैतिकता और कर्तव्य परायणता विनष्ट हो जाती है । महाभारत
के उद्योग पर्व में इसका वर्णन है ।¹⁸ बृहस्पति ने मनु के मत का समर्थन
करते हुए घृत का निषेध किया है ।¹⁹ बहुत से मनुष्य हंती मजक तथा

5- घृतं समाह्वयं चैव यः कुर्यात्कारयेत् वा ।

तान्सर्वान्धातयेद्वाजा भूदश्च दिजलिङ्गिनः ॥

मनु 9/224

6- ऋ 1/41/9

7- आहूतोऽहं निवर्ते कदाचित्ताहितं शाश्वतं वे प्रतं मे ।

समापर्व 58/16

8- अक्षयुतं महाप्राज्ञ मतिविनाशिनम् ।

ततः तत्र जायन्ते भूतश्च व्यत्नानि च ।

उद्योग पर्व 128/6

9- घृतं निषिद्धं मनुना तत्पशोचक्ष्मापहम् ।

बृह 1.1.1.1 पृ 2, पृ 33।

मनोरंजन के लिये जुआ खेलते हैं । मनु ने हँसी मजाक में भी जुआ खेलने पर प्रतिबन्ध लगाया है । मनु ने कहा है कि यह जुआ बहुत पहले समय में भी बहुत कष्ट एवं श्रुता पैदा करने वाला देखा गया है अतः बुद्धिमानों को हँसी मजाक में भी जुआ नहीं खेलना चाहिए ।¹⁰¹

10- धृतमेतत्पुरा कल्पे दृष्टं वैरकरं महत् ।

तस्माद् धूर्तं न सेवेत हास्यार्थमापि बुद्धिमान् ॥

मनु0 9/227

विवादबदों के निर्धारण में निर्धारण में साक्षी का उपयोग =====

विवाद बदों के निर्णय में साक्षी का विशेष स्थान है । साक्षी के अभाव में उचित ~~प्र~~ निर्णय नहीं हो सकता है । पाणिनि ने साक्षात् देखने वाले को साक्षी कहा है ।¹¹ साक्ष्य दो प्रकार से सिद्ध होता है एक जिसने स्वयं देखा है और दूसरा जिसने स्वयं सुना है ।¹² साक्षियों की संख्या के विषय में भी विवाद ही रहा है । बृहस्पति के अनुसार साक्षियों की संख्या 9, 7, 5, 4 या 3 हो सकती है । परन्तु मनु तथा ^{27/1}स्मृत्यु ने साक्षियों की संख्या तीन मानी है, ¹³ परन्तु दोनों पक्षों के सहमत होने पर धर्म को जानने वाला एक व्यक्ति भी साक्षी हो सकता है ।¹⁴ कौटिल्य ने एक साक्षी के विषय में कहा है

1- साक्षाद् द्रष्टरि संज्ञायाम् । पाणिनि 5/2/9 ।

2- समक्षदर्शनात्साक्ष्यं स्वणाच्चेव सिद्ध्यति ।

मनु 8/14

3- त्रयवरेः साक्षिभिर्भाष्यो नृपब्राह्मण सन्निधौ ॥

मनु 8/60

त्रयवराः साक्षिणो ज्ञेयाः प्रौढमार्तक्रियावराः ॥

याज्ञ 2/69

4- उभयानुमतः साक्षी भ्येत्येकोऽपि धर्मयित् ।

याज्ञ 2/72

कि गुप्त रूप से लेने देने के मामले में एक स्त्री या पुरुष साक्षी हो सकता है, किन्तु राजा एवं तबस्वी ऐसा नहीं कर सकते ।¹⁵ हर व्यक्ति को साक्षी नहीं बनाया जा सकता, मनु के मत में सब वर्गों में धार्मिक, विद्वान, निष्कवटी, सब प्रकार के धर्म को जानने वाले, लोभ रहित, सत्यवादी को ही साक्षी बनाना चाहिए, इनसे विपरीतों को नहीं ।¹⁶ याज्ञवल्क्य ने भी मनु के मत का समर्थन किया है ।¹⁷ धर्मशास्त्रकारों ने साक्षी को पक्ष के वर्ग या जाति का होना चाहिए, स्त्रियों के विवाद में स्त्रियों को ही साक्ष्य देना चाहिए, द्विजों के विवाद में द्विजों को, शूद्रों के विवादों में शूद्रों को, चाण्डालादि के विवाद में चाण्डालों को साक्षी होना चाहिए ।¹⁸ मनु ने इसके साथ

5- रहस्यव्यवहारेष्वेको स्त्री पुरुष उपप्रीता उपद्रष्टा वा साक्षी
स्याद्राजतापतवर्ज्य । कौटि०शा० ३/११

6- आप्ताः सर्वेषु वर्णेषु कार्याः कार्येषु साक्षिणः ।
सर्वधर्म विदोऽनुबन्धा विपरीतानि तु वञ्छित ॥
मनु० ८/६३

7- तपस्विनो दानशीलाः क्लीनाः सत्यवादिनः ।
धर्मधाना ऋजः पुत्रवन्तो धनान्विताः ॥
याज्ञ० २/६८

8- स्त्रीणां साक्ष्यं स्त्रियः कुर्युर्द्विजानां तदशादिजाः ।
शूद्राश्च तन्तः शूद्राणामन्त्यानामन्त्योन्तः ॥
मनु० ८/६८

ही एक विकल्प भी दिया है कि कोई घटना घर के अन्दर एकान्त में
अथवा जंगल में एकान्त में हुई हो रक्तपात आदि से शरीर के घायल
हो जाने की अवस्था में जो कोई अनुभव करने वाला हो वही साक्षी
बन सकता है । ज़रूरी चाहे वह कोई भी क्यों न हो ।⁹ साक्षी हर व्यक्ति
नहीं बन सकता । याज्ञवल्क्य ने इनकी एक सूची प्रस्तुत की है कि स्त्री,
बालक, वृद्ध, जुआरी मदिरा पीने वाला, पागल, महापात की,
रंगावतारी, पाखण्डी, झूठ लेख लिखने वाला, बहरा या गूंगा, ब्रह्म-
हत्यादि महापाप करने वाला, पतित, मित्र, धन देने वाला सहायक,
शत्रु, चोर, बलात्कार से किसी की वस्तु का अपहरण करने वाला,
प्रत्यक्ष दोष से युक्त और बन्धुओं द्वारा परित्यक्त व्यक्ति साक्षी नहीं
बन सकता ।¹⁰ मनु ने स्त्री के विषय में कहा है कि स्त्री भी साक्षी
बन सकती है याज्ञवल्क्य ने स्त्री के साक्षी होने पर प्रतिबन्ध लगाया
है ।¹¹ ~~अथवा प्रकृत्यै/ने/तत्त्वै~~ कौटिल्य के मतानुसार भी स्त्री साक्षी

9- अनुभावी तु यः कश्चित्कुर्यात्साक्ष्यं विवादिनाम् ।

अन्तिर्वैमन्थरण्ये वा शरीरस्यापि चात्यये ॥

मनु 8/69

10- स्त्री बालवृद्ध कितवमत्तोन्मत्ताभिस्तकाः ।

रङ्गु, अवतारि पाखण्डि कूट कृदिक्लोन्धियः ॥

पतिताप्तार्थ संबन्धि सहायारि पुत्तकराः ।

साहसी दुष्ट दोषय निर्धृताधास्त्य साक्षिणः ॥

याज्ञ 2/70-71

11- स्त्रीणां साक्ष्यं स्त्रियः----- ।

मनु 8/68

बन सकती है । राजा और तपस्वी साक्षी नहीं बन सकते ।¹²

मनु के अनुसार भी राजा साक्षी नहीं बन सकता ।¹³ जो साक्षी नहीं बन सकते उनका वर्णन करते हुए मनु ने कहा है कि अगादि लेने देने वाले, मित्र, नौकर आदि, शत्रु, जिनकी गवाही बहने झूठी सिद्ध हुई हो, रोग से ग्रस्त, सजा पाये व्यक्ति साक्षी नहीं बन सकते ।¹⁴ आज की भांति प्राचीन काल में भी गवाही से पूर्व साक्षी को शपथ लेनी पड़ती थी ।

इसका वर्णन भी धर्मशास्त्रों में आया है । कौटिल्य ने कहा है कि साक्षी पानी के मटके या अग्नि के सामने शपथ ले ।¹⁵ मनु के अनुसार ब्राह्मण को सत्य के नाम पर शपथ करार, क्षत्रिय को वाहन और शस्त्रास्त्र की, वैश्य को गौ, बीज और सुवर्ण की तथा शूद्र को सब पातकों के नाम की शपथ करावें ।¹⁶ यदि एक विवाद में बहुत साक्षी हों और उनकी गवाही

12- रहस्य व्यवहारेष्वेको स्त्री पुरुष उपश्रोता उपदृष्टा वा
साक्षी स्यात् राजतापसवर्ज्य । कौटिल्य ३/११

13- न साक्षी नृपतिः कार्यो----- ।

मनु ८/६५

14- नार्थसम्बन्धिनो नाप्ता न सहाया न वैरिणः ।
न हृष्ट दोषा कर्तव्या न व्याध्याता न दुष्टिताः ॥

मनु ८/६४

15- ब्राह्मणोदकुम्भाग्निस्तकारे साक्षिणः परिगृहणीयात् ।

कौटिल्य ३/११

16- सत्येनशापयेद्विं क्षत्रियं वाहनायुधैः ।

गोबीजकण्डूच नैवैश्यं शूद्रं सर्वेषु पातकैः ॥

मनु ८/११३

में विरोध हो जाए तो वही बात माननी चाहिए जिसको बहुत गवाहों ने कहा हो और यदि गवाहों की समानता हो तो अधिक गुणी व्यक्ति की गवाही को ही सत्य मानना चाहिये यदि दोनों गवाह गुणी हों तो कर्मनिष्ठ ब्राह्मण की गवाही को ही सत्य मानना चाहिए ।¹⁷

याज्ञवल्क्य ने भी मनु के ही मत का समर्थन किया है ।¹⁸ श्री जित मुकुन्दमें में यह पता लगे कि गवाही झूठी तथा गलत हुई है तो उस निर्णय का रद्द करके पुनः विचार करे । जो व्यक्ति लोभ, मोह, भय, मित्रता, काम, क्रोध, अज्ञान और बालकपन से ताक्ष्य दे, वे मिथ्या समझे जाने चाहिए ।¹⁹

- 17- बहुत्वं परिगृह्णीयात्ताक्षिद्ये वराधिः ।
तमेषु तु गुणोत्कृष्टान्गुणिद्ये विजोत्तमान् ॥

मनु 8/73

- 18- ज्यैः बहूनां वचनं तमेषु गुणिनां तथा ।
गुणिद्ये तु वचनं ग्राह्यं ये गुणवत्तमाः ॥

याज्ञ 2/78

- 19- लोभान्मोहादभयान्मैत्रात्कामात्क्रोधात्तथैव च ।
अज्ञानाद्बालाभावाच्च ताक्ष्यं वितथमुच्यते ॥

मनु 8/118

निर्णय =====

मुकदमों की पूर्ण रूप से सुनवाई तथा परीक्षा करके के बाद ही राजा को निर्णय करना चाहिए । नारद ने कहा है कि सभासदों को चाहिए कि वे जब दण्ड निर्णय करें तो दोनों पक्षों को न्यायालय से बाहर जाने की आज्ञा दें ।¹¹ मनु ने कहा है कि जो कोई कर्जदार कर्ज लेकर कर्ज देने से मुकर जाये और लेख, साक्षी आदि साधनों से उसका कर्ज लिया जाना निश्चित हो जाये तो महाजन का धन दिलवाये तथा उसकी शक्ति के अनुसार दण्ड भी दे ।¹² मनु ने कहा है कि शाश्वत धर्म का आश्रय लेकर राजा विवाद करने वाले पुरुषों का निर्णय करे ।¹³ कर्जदार मुकदमों में अण देना स्वीकार कर ले तो उस पर सैंकड़ा पर पाँच पण दण्ड करना चाहिये और यदि कर्जदार असत्य कहे और बाद में अण देना सिद्ध हो जाये तो उसका दण्ड अर्थात् दश गुणा दण्ड का निर्णय

1- नारद 2/42

2- अर्थप्रव्ययमानं तु करणस विभावितम् ।

दापयेद्वनिकस्यार्थं दण्डलेखं च शक्तितः ॥

मनु 8/5 ।

3- एषु स्थानेषु भूयिष्ठं विवादं चरतां नृणाम् ।

धर्मं शाश्वतमाश्रित्य कुर्यात्कार्यं विनिर्णयम् ॥

मनु 8/18

करना चाहिये ।¹⁴ जब विवाद/करने/करने/ राजा स्वयं किसी विशेष कार्य से स्वयं मुकदमों का निर्णय न करे तो वह विद्वान् ब्राह्मण को मुकदमों के निर्णय के लिए नियुक्त करे ।¹⁵ मुकदमों का निर्णय करने से पूर्व राजा को श्रावित्व वह प्रतिवादी के विषय में वादी द्वारा बताया गया लिखे उसके बाद उसके आगे वर्ष, मास, पक्ष, दिन, नाम और जाति आदि लिखे ।¹⁶ मनु ने कहा है कि मुकदमों के कार्यों में राजा द्वारा नियुक्त कर्मचारी रिश्वत लेकर मुकदमों को बिगाड़ें तो राजा उनकी सारी सम्पत्ति छीन ले ।¹⁷ मुकदमों के पुनर्विचार के विषय में मनु ने लिखा है कि जिस मुकदमे में यह पता चलने कि गवाही

4- अर्णं देये प्रतिज्ञाते पंचकं शस्तमहति ।

अपहन्त्ये तद द्रिगं तन्मनोरनुशासनम् ॥

मनु 8/139

5- यदा स्वयं न कुर्यात्तु नृपतिः कार्यदर्शनम् ।

तदा नियुञ्ज्याद्विद्वान् ब्राह्मणं कार्यदर्शि ॥

मनु 8/9

6- प्रत्यार्थिष्ठे ग्रतो लेख्यं यथा वेदितम् अर्थिना ।

समासाततदर्धानामजात्यादिपिहितम् ॥

याज्ञ 2/6

7- ये नियुक्तास्तु कार्येण हन्युः श्रमार्थीकार्याणि कार्याणिगाम् ।

धनोष्मणा पथ्यमानास्तन्निः स्वान्कारयेन्नुषः ॥

मनु 9/231

झूठी हुई है उस निर्णय को राजा रद्द कर देवे और उस पर पुनः विचार करे ।¹⁸ जिस मुकदमे को मन्त्री अथवा न्यायाधीश अन्यायपूर्वक जिस/मुकदमे/का दें तो उस मुकदमे के निर्णय को राजा स्वयं करे और उन अन्यायपूर्वक निर्णय करने वालों को राजा एक हजार पण का दण्ड दे. ¹⁹ परन्तु जिस मुकदमे में निर्णय न्यायपूर्वक हुआ है और उसके दण्ड का भी आदेश दिया जा चुका है ऐसे धर्मपूर्वक हुए उस निर्णय को लागू किया जाना चाहिये और राजा उस मुकदमे का पुनः निर्णय न करे । ¹¹⁰

8- यस्मिन् यस्मिन् विवादे तु कौट साक्ष्यं कृतं भवेत् ।

तत्तत्कार्यं निवर्तेत कृतं चाप्यकृतं भवेत् ॥

मनु 8/117

9- अमात्याः प्राद्विवाको वा यत्कुर्युः कार्यमन्यथा ।

तत्स्वयं नृपतिः कुर्यात्तान्तस्त्रं च दण्डयेत् ॥

मनु 9/234

10- तीरितं चानुशिष्टं च यत्र क्वचन यद्विभेदः ।

कृतं तद्वर्जितं विद्यान् तद्वर्जितं निवर्तयेत् ॥

मनु 9/233

CHAPTER V

SOCIAL PHILOSOPHY OF MANU

Present has in it a reflection of the past.

Indian society today is influenced by our past. Therefore if we discuss Manu as a builder of ancient Indian Society we may yet understand what was the fundamental social philosophy of the ancient society from which it has come to its present form. Even in its present changed form the society echoes its old problems and social goals.

There, however, have not been any revolutionary social reformers to change the old values and replace ^{them} ~~it~~ with new ones to suit the need of modern times.

Evolution of mankind shows how time plays a great part in developing the society in consequence to its needs. Effects of the laws of Manu were so deep in the society that even to-day we feel effects and the echoes of laws of Manu which should be brought to light to understand how the social system is still affected by needs of a by gone era. But the laws of Manu cannot be taken only as defining of relationships of a particular time because they endeavour to define relationships transcending time and space barriers and ~~devolve~~ ^{delve} into fundamental problems of human relationships of course into certain modifications in time with place and time.

Manu as a social organiser laid his laws which were the codes of conduct of the society of that age. As Shri P.H. Prabhu has rightly said, - "Dharmaśāstra and other scriptural literature of the Hindus seek to deal not only with what is, but also what ought to be. Not only actual individuals and actual human groups living in a particular country and during a specific period in which they were written, but also ideal individuals and ideal human relationships conceived as true and beneficial for any

people, in any age and in any time, in general and broadly, from the subject matter of the Hindu śāstras".¹

Aryans came to India which was already a highly developed civilization while others were nomadic and barbarous. The settlement of the Aryans were therefore neither smooth nor without influences from the earlier inhabitants of the Indian peninsula. Aryan conquest of India was at no point total either physically or culturally. Further throughout the ages India has been invaded by variety of races who brought with them alien customs, traditions ^{and} values. It was therefore necessary for the Aryans to develop relationships with these communities on the basis of accepted codes of conduct and norms, which were preserved and fostered by developing values as governing force internal to the Aryan community. "There came the day when "Rāmachandra, the Kṣatriya of royal descent, embraced as his friend and comrade the lowest of the low, the untouchable "Chandāla" - Guhaka - an incident in his career which to this day is cited as proof of the largeness of his soul."²

These codes remained for many years scattered and perhaps unsystematic. "The writers of Smṛti accordingly sought to restrain the highhandedness of human reasoning,

¹ Prologue by P.H. Prabhu in Hindu Social Organisation.

² A vision of Indian History by Tagore pps 31.

or excessive passion for revolutionary change, by invoking veneration for transcendental authority of the Veda in matters of law".³ It was Manu perhaps who first gave a shape to these codes as governing principles of social conduct within Aryan communities and their relationship with those who were outside it. "Of all the ancient civilizations, I think, that of India was compelled to recognize this race problem in all seriousness and for ages she has been engaged in unravelling the most baffling complicated tangle of race - differences."⁴

These codes enabled the Aryan communities to live in relative peace with the non-Aryan races because they spell out clearly the extent of permissible contact. Violation of these norms ~~were~~^{was} meted with severe punishment given by the community itself.

Even though a minimum of contact was allowed in the codes, in peripheral areas of Aryan settlements, contacts with non-aryans must have been considerable. This called for further rationalisation of relationship by extension of the code of contact, which affected life style of individuals. Thus the code of conduct encompassed not only external relationship of the Aryans with non-Aryans but it gradually encompassed all aspects of communal life in

3 Manusmṛitā Chap. III by Dr. K.G. Goṣwami
(Introduction pps 15) .

4 Boundless sky by Rabindra Nath Tagore.

ancient India. For instance Manu's laws extend from caste duties to duties of kings on one hand and duties of a father and that of a person in different phases of his life. In effect it became "Dharma" which held the society together. For implementation of this Dharma reliance in values was more than on threat of punishment. Most of the punishments for violation are in the next world or in the next birth which would not have been a real threat to any violation of the code.

Manu has to be seen as moulder of social values by providing codes of behaviour which spells out inter-dependence based on clearly defined heirarcy. Whether one contributes to those values or not is immaterial but it must be conceded that the codes provided a direction for the society to behave in terms of its value in accordance with that age.

Society as a organic whole and individuals as its parts are inter-dependent so inter-related. However, every society has its fixed norms and ideals which provide a status in human relationship. So that it is said, "The concept of a society", implies a system of more or less settled statuses to each of which correspond particular patterns of actions appropriate to a range of situations. By virtue of qualifying conditions a man enjoys a status;

in virtue of that status he has a role to play. These concepts, however are meaningful only in the context of values or norms of conduct - a man's role is not simply what he habitually does (for this may be no more socially significant than a tie) nor even what he is expected to do, if an expectation is only what one might predict about his future conduct from a knowledge of his past. His role is what is expected of him, in the sense of what is required of him by some standard."⁵

Today we look upon society as a net of social relationships. The social relationships are of a complex nature, some are simple, some are permanent and some are quite temporary. They include behaviour, customs, mores of operation authority. It is a well known fact that man is a social being. Its existence and growth is rendered impossible in the absence of the society. For this purpose some social norms are necessary and it is the job of social thinkers to establish customs and traditions, laws and rules for the proper function of society. If we look at the code of Manu, we find that how he is very intelligent and scrupulous in formation of laws meant for all human beings of course on the basis of social traditions, norms and customs current in that age.

5 Encyclopaedia of Philosophy (this passage is written by Stanley Iben.

This thought finds a confirmation in Dr. Radha Kumud. Mukherjee - "The root of success in the working of democracy is traced to the moral fitness of the citizens concerned in their habits of unity among themselves in the different spheres of private and public life. Its foundation lay in the domestic life and family where the parties and partners concerned must cultivate constant concord among themselves by way of an emotional integration."⁶

However, society stands for the status where individuals of same temperament are grouped together. The individuals of the same society have some norms and ideals in the way of conduct. To keep the standard intact Hindu philosophers termed this as Dharma, is to be obeyed to keep the standard perfect. This standard can be changed with the growth of the individual awakening and influence of time.

Thus the notion of movement, change flux of society as a continual becoming, "society", writes Mac Iver, "exists only as a time sequence. It is a becoming, not a being, a process, not a product Society lives on only as a changing equilibrium of present relationships."⁷

Manu said - Brahmins and others born in this Āryavarta, may all the people on this earth should learn their proper conduct.⁸ This is to secure happiness in human life.

⁶ Glimpses of Ancient India by Dr. Radhakumud Mukherjee. pp. 6,7.

⁷ Encyclopadia of Social Science. (This passage is written by Mac Iver).

⁸ Manusmṛti II.20

But the inter relation of the individual and society. cannot be changed. As a member of the society an individual is practising different roles. He according to his qualification has his status in the society, he is exercising his different roles as a son, a father and a brother in a family and as an individual he is exercising his personality. But all of his endeavours are linked together by the expectations of the society, as each society has its norms and ideals with which it wants to preserve and foster.

Thus in Manu we find that he has given emphasis on building up conduct i.e. *acāra* paramo dharma⁹ He has given tenfold laws as the very basis of conduct.¹⁰ He further clarifies the norms and ideals while stating - "The whole veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the (Veda further), also the customs of holy men, and (finally) self-satisfaction."¹¹

He further says - "But a learned man after fully scrutinizing all this with the eyes of knowledge, should in accordance with the authority of the revealed texts be intent on the (performance of) his duties."¹²

9 MS I.108

10 Ibid VI.92

11 Ibid II.6

12 Ibid II.8

→ "धृतिः क्षमा दमोः स्तेयं शौचमिन्द्रियनिग्रहः
धीर्विद्या सत्यमक्रोधो दशकं धर्मनिष्ठायाः"

Again "when the performance of an act gladdens his heart, let him perform it with diligence, but let him avoid the opposite."¹³

Thus, in his philosophy we find that much importance is given on individual freedom. But at the same time a standard of behaviour for individuals is expressed in the codes of laws of Manu. Thus individual, being a component part of an organic whole as described by Hegel has to maintain some standard as an ideal or norm of that particular society. Dharma in Hindu philosophy stands for maintaining this standard. So it is said by Sri P.H. Prabhu "Hindu social organisation" that - "The Dharmasāstras were obeyed not under coercion but with a high sense of duty and with a view to maintaining and furthering the good of the community. And, it is evident that the good of the community was made quite practicable by this attitude of the ancient as envisaged by the Dharmasāstras."¹⁴

Manus laws are important in four directions:-

- 1) Laws towards building a healthy family.
- 2) Laws towards four stages of life.
- 3) Laws towards four varnas or four castes.
- 4) Laws of the king or Rājdharmā.

¹³ Ibid IV 161

¹⁴ Hindu Social Organisation by Sri P.H. Prabhu.

They were found congenial to the society of his age.

Hindu society had the most peculiar characteristics which was never witnessed by any of the countries in the past. It was constant battle field where each family duty was to be performed with vigilance to preserve the group characters and heritage. Due to constant foreign invasions so called ancient Hindu Dharma became too much rigid and restricted in its expression. Indian culture always gives priority to fidelity. That is the reason why we find so much restrictions in laws laid by Manu and others on every details of family life specially in marriage which is the basis of building a future healthy family. Rabindra Nath Tagore in his book "Swadesh and ~~Sw~~ Samāj" says that family (grha) is the most important factor in a society and its role is just a fort (dūrگا) and each individual is serving as a soldier in a fort who looks after its welfare.¹⁵

Manu echoed the same feeling in the past.

He had foreseen that marriage was the basic important factor in building up a healthy society and thus to look after the interest of the growth of society.

He had given much importance to building up moral character of each and every individual and described it as, "dharma". Selection of material partners has the social value on which depends the future unity of the society.

15 Swadesh and Samāj by Rabindra Nath Tagore.

Manu has laid great importance on "Strīdharmā" just to keep the family lives intact which is one important necessity in Hindu view of life. He says that women folk should be protected by her father when she is young, by her husband and after marriage and by her son in old age.¹⁶ Though it may be thought as useless in modern times but in Indian society its importance can not be lessened as women are considered as mothers - "To be mothers were women created and to be fathers men."¹⁷ Social values had much more importance so that individual freedom was hampered in comparison with other countries which enjoyed it. But it is the view of Manu like that of other Indian social philosophers who also realised the value of importance of concept of Indian marriage and made laws though it may be revealed as too much elaborate in details in first glance. The reasons for these elaborate laws are nothing but the reactions, the constant invasions by different races.¹⁸ India was receiving different cultures and values with these invasions so that to preserve its own culture and heritage Hindu dharma maker became orthodox and may even have been too. But without these laws the society would have died like other ancient cultures of the world and would not be able to get the honour of being the oldest religion of mankind.

16 Manusmṛti IX 3

17 Ibid IX 96

18 Svadeśh O Samāj by Tagore.

Stridharma

Here in India importance is given on creation of happy and healthy family. From the early age a girl starts thinking about her imaginary husband. With the observation of rituals and vows a kind of devotion is cultivated in the mind of the young girl who after marriage finds solace in adjusting herself in a completely new environment with devotion and dependence on her husband. She is somewhat overpowered with this type of orientation and therefore for her to make adjustments and to love her husband and new relations poses no problem.

On the other hand "the husband receives his wife from the gods (he does not wed her according to his own will, doing what is agreeable to the gods, he must always support her (while) she is faithful."¹⁹

In every marriage there is a question of adjustment and it is only this adjustment which make the marriage successful. When such adjustments ^{are there} there is no necessity of special freedom in choosing the partners. Through good and healthy marriage, a family which formed the important unit in society, was placed on its firm footing. Therefore Manu laid down too many laws of marriages and duties on women for building a healthy family and society.

19 Manusmrti IX.95

In Indian code of morality importance is laid on restraining one from individual enjoyment. It is thought and said - "desire is never extinguished with desired objects, it only grows stronger like a fire fed with clarified butter"²⁰. Desire is the most natural thing with every animal being but it is man's attainment as a refined animal to cultivate it and to restrain it otherwise such desires become wild, ~~first~~ just like a charioteer he has to man his horses i.e. senses."²¹ So restraint too is emphasised for all varnas and āsramas.

It is said by Tagore that this desire hampers the happiness of man and woman in certain age.²² So that Hindu philosophers thought it is wise to get the marriage done before man and woman reach this age. Therefore though it is without their consent (approved by parents) yet adjustment in most cases is easy. It is very much beneficial for the society and the family.

Strīdhana is very vividly depicted in the laws as it was the heritage of that time and strīdharma has its importance in social context.

A married girl has in her mind an idea mingled with devotion towards her husband. This is Satī - sādhyitva - faithfulness. She who controls her thoughts, speech and acts,

20 Ibid II.94

21 Ibid II.88

22 Swadesh O Samaj by Tagore

violates not her duty towards her lord dwells with him (after death) in heaven and in this world is called by the virtuous a faithful wife.²³

But disloyalty to her husband a wife is censured among men and her next life she is born in the womb of the 'jakal and tormented by diseases, the punishment of her sin.²⁴ In the case women became (disrupt) in the words of the Gītā there is bound to be a disorder in the society.²⁵ So Manu thought it is worthwhile to give mere emphasis on strīdharm^{ym} from social point of view and as a social philosopher, he tried to do justice to the then existing society.

Here Tagore finds that our mutual love transcends the natural individual likening and there is a tendency to endeavour to cultivate a type of mutual understanding and love which serves the purpose and values of the society. But as women are emotional (Tagore),²⁶ it was easy for them to be sincere in their thought. They inspire their counterpart with their emotional love based on sincerity on dharma which as a result builds up an ideal mutual carefree love which differs from the natural lust (Moha).

But men were not governed by very strict laws as was laid for the woman who used to violate the general rule of strīdharmā. The same type of "restrictions" was imposed in

23 Manusmṛti IX 29

24 Ibid IX 30

25 Bhagabat Gītā - I - 416

26 Svadesh O Samāj by Sri Rabindra Nath Tagore.

European countries on women and men in ancient time.²⁷

So that men began to enjoy this opportunity. Even today we find the evil results of this partiality. As a result of men are overpowering the womanfolk and are not always loyal towards their wives, Woman could have become much more degraded if these strictness of laws ^{were} ~~was~~ not there.

Because of the strīdharmā they were conscious to follow the dharma and saved Indian heritage. This was the vision of Manu.

We find Manu was wise in accepting the strictness of Strīdharmā as these are the basis of preserving family linkage and these are helpful to maintain discipline in society. Otherwise too many problems, like many divorce cases, broken families which Western countries are facing, India also has to face them too.

Even today though we are in a way over shadowed by Western cultures in our family life, the society expects women to follow the strīdharmā which was prescribed long back by ancient law giver, in order to have sane society. "In social reform the best result can be obtained by going to the sources, instead of dealing merely with the effects of wrong and suffering."²⁸

27 Manav Samāj by Sri R.S. Katyān pps 44

28 Women, marriage and motherhood by Elizabeth Slohan Chesser.

Duty towards parents

Āchārya devo bhava,

Mātrdevo bhava,

Pitradevo bhava.²⁹

Teacher, mother and father should be honoured and must be thought of as a person's most important duty when he becomes a householder because it is they with their toil have made him such a person and so he must be grateful to them. "To honour them, to obey them and to look after them must be his foremost duty."³⁰

But it is very often seen now-a-days that a man and his wife forget this vow of ancient times which represents a basic Hindu concept.

They forget that they were ~~the~~ the recipients of same care and attention and love which they are bestowing towards their children now. Parents in old age become economically dependent on their children and thereby loose hold on them but it is very opposite of Hindu philosophical thought and degrades the society. But it is certainly true on the otherhand that if the elderly persons have some source of income then their condition would not be as they are now. But dharma wants to elevate the conditions of the

29 Taiterīya Brāhmana

30 Manusmṛti II.234 and 237.

elders by making householder conscious of his duty rather than by financial arrangement. This benefits the elders because they receive not only material comfort but respect and at the same time it benefits the householder because he maintains his morals and therefore Dharma.

In the West the old are cared for by the State, through old age pensions and homes. These are passive institutions and are no substitute for affection of One's children.

Manu further adds the importance to the elder brother when he says that the teacher is the image of Brahman, the father - the image of Prajāpati (the lord of the created beings), the mother - the image of earth and an elder brother the image of oneself.³¹

Coming to laws towards the four stages of human life we find that Manu has had a psychological insight in formulating laws thereof. As a social philosopher, he has taken into account all human weakness, defects, physical as well as psychic and that is why he could think of various duties imposed on men undergoing through ~~stages~~ four stages of human life.³² Society consisted of four varnas in the age of Manu. These four varnas viz.

31 Manusmṛti II 226

32 Manusmṛti II chapter

Brāhminas, Kshatriyas, Vaisyas and Sūdras had their role in the society for its proper function. Manu laid down laws for each of them.³³ However it appears from these laws Manu was partial to Brāhminas even in the matter of punishment to various crimes committed by them and he was cruel to Sūdras in that matter. The same spirit is seen throughout the work. That is why he is severely and bitterly criticised on the defame side. It can be truly said that though laws of Manu were Brāhmin-oriented, his aim was to keep the current order of the society intact. There was no personal or selfish motive behind him, on the contrary he had an aim establishing the sane society based on right conduct. He was guided by this principle and it was a different task to throw away the current social order and establish an entirely a new order in society. Moreover Manu was not a king or Government, he was a law giver and if the spirit of the law was not taken into account by the government, it was not the mistake of the law giver but the political power corrupts a man and absolute power corrupts absolutely. This is not to save Manu from the charge of being cruel to Sūdras but we have to admit that as a social philosopher he failed in his mission to give justice to the downtrodden class but he might have been helpless in that set up of society and age in which he lived. This much can be rightly said.

33 Ibid I and II.

The Rājadharmā is discussed in the chapter VII. Thus we find that Manu has taken into account the whole human life as one and his laws were directed in four directions as said earlier. He has covered all the relevant points for the proper growth and function of society. As a social philosopher and a social organiser he did the job efficiently and effectively in his own way to keep the society intact for many centuries. Whatever evil came as a result of his laws should be settled now as no philosophy can be so far reaching in consequence. So that it is bound to have some change according to the change and growth of the society.

Manu's advice was considered as whole-some medicine to all and it guided from a common man to a philosopher like Sāṅkarācārya who often quoted Manu in Śarīra bhāṣyas in support of his argument. His views on Dāyabhāga are well-known. He has analysed in details all the relations in the matter of property rights in chapter IX. We may judge him from any point of view. Manu must be a great social philosopher and organiser in ancient India.

CHAPTER VI

MANUSMRITI AS A LAW BOOK

The work of Manusmriti has been studied from different angles in the First Five Chapters and in this chapter, it is to be studied as a law-book as well as ancient constitution of India.

It is a well known fact that the Manusmṛitā is listed among the works of Smrities and it is one of the outstanding works in the history of Smṛiti literature.

The very popularity and criticism against the work will testify to its greatness. Whatever may be the age of the work, it has been observed that the Manu's work was looked upon as one of the principal sources of Hindu Law till recent times. In Indian tradition Smriti works come next to Śruti and it is believed the Law is based on "Śruti-Smriti Purāṇokta" dharma. Let us take into account the meaning of the word Smriti. It is defined as follows:

(a) What was delivered by human authors, law, traditional law, the body of traditional or memorial law - civil or religious.¹

(b) Legal text²

(c) Knowledge of the topics or objects of experience³

Subject matter composed by the sages like Manu and others⁴.

(d) Smriti is the thought of the great sages with reference to the meaning and significance of the Veda, thereby their works are also Smriti.⁵ From these references it is clear that the Smriti is based on Veda and it refers to the laws and codes meant for human beings of all classes and castes. Manu himself says that all

1 Sanskrit English Dictionary by Sri V.S. Apte

2 Sanskrit English Dictionary by Monier William

3 स्मृतिरनुभूतविषयज्ञानम् (जिंदे शब्दकल्पद्रुम)

4 Ibid

5 Ibid

human beings should follow their duties laid down here.⁶

In the text itself it is stated that the principal source of Dharma is Veda and Smriti.⁷ In the definition of Dharma Veda and Smriti are also included.⁸ These references indicate that the Manusmṛitī is a great Smriti text in the real sense of the term because of the fact that Manu of divine origin proclaims duties of all classes, laws and rules of inheritance and duties of kings etc. on the basis of traditions and customs handed down from the days of the Veda.

Smriti works are also considered as Law Books and legal codes in ancient times. Law in ancient India was intimately connected with religion. So it has been rightly said that the so called code of Manu contains a great deal more about acāras - established practices, observances of castes, domestic ceremonies, funeral rites etc. and other religious questions.⁹ Law and Dharma are identical words in ancient India. The word Dharma equal for law is derived from *√dhr* that which is strongly supported viz. custom and this primary significance is never loses, therefore, Dharma upholds the entire world, it means solidarity and adharma is anarchy or lawlessness

6 Manu 2-20

7 M.S. II-9

8 M.S. 2-12

9 Vide Encyclopædia of Religion and Ethics Vol. X
Edited by Janes Hastings 1952.

illegal or unrighteous acts or conduct.¹⁰ As such Dharmaśāstras are rightly called the oldest manifestation of definite schools of law. The work of Manu, has been acclaimed to be one of the outstanding works on the subject, it deals with all the dharmas of all the classes and castes, ruling and ruled class and makes recommendary laws regarding marriage, inheritance of property etc. All these topics come under the purview of Dharma which was considered by Manu and others as the supreme law of the land.

It is not possible to deal with this subject exhaustively here, it is also not the aim of the thesis to study this subject thoroughly, so we will take a brief survey of certain provisions of laws in the Manusmriti and try to estimate them from modern point of view.

Today law is defined as (a) the principles and regulations established by government and applicable to people whether in the form of legislation or of customs and policies, recognised and enforced by judicial decisions (b) any written or positive rule of collection of rules prescribed under the authority of the state or nation as by the people in its constitution¹¹ or it is defined as body of enacted or customary rules recognised by community

10 Encyclopadia of Social Sciences Vol. IX

11 Vide The Random House Dictionary of the English Language 1969

as binding or it is a binding injunction.¹² With these references in mind, if we study the work of Manu we will definitely find that the work is indeed a law book of ancient times. As stated earlier, Dharma was the supreme law of the land, it was binding on all persons including the ruling class. No one was considered above Dharma or law. It cannot be definitely stated that Manu's laws were actually enacted in the form of legislation but at the same time it can be positively stated that all laws laid down by Manu were based on immemorial traditions and customs upheld by the Society of that time. Manu's laws are in a way personal and hereditary, not territorial in spirit. This can be seen from the following views of Manu:

- (a) Foundation of law is acāra. (M.S. I-108)
- (b) Duties differ from age to age, as such in each yuga there are different Smritis (MS-1-86). This principle of Manu shows clearly that he is not very conservative but liberal in attitude and this is quite right in tune with the history of human civilization.
- (c) It is meant for all (MS-2-20). Manu refers to all the persons on the universe and asks them to abide by the laws for their own interest.

¹² Vide The Concise Oxford Dictionary 1964.

- (d) Manu recognises the bitter truth that it is very difficult to find a virtuous person and as such pains and penalties become necessary for the purpose of Dharma. (M.S. VII-22). Laws are ^{23,24,25} necessary for the protection of the good people and this principle is accepted by Manu.
- (e) There are established traditions and customs with reference to marriage. Manu speaks of eight forms of marriages and recommends only 4 legal marriages for the sane order in the society (see 3rd chapter). He also disapproves Niyoga system. (M.S. IX-57-60) on the ground that such a custom was prevalent in the regime of Vena who was a vicious king.
- (f) Even in the case of kings and their administration various laws are prescribed by Manu for the welfare of the State (see Chapters VII and IX). Law is above all and this democratic principle of the present century is upheld by Manu when he says that a king should never violate Dharma (MS-8-15) and if he does so he will perish himself (MS-7-28).

These stray references in the work of Manu strongly support Manu's concept of law which was based on Dharma. According to Manu, there are five sources of law or Dharma viz. the whole Veda, tradition, practice of the knowers of the Veda, customs of various men and self satisfaction.¹³ Manu's laws were not written laws but traditional and customary in nature. But the entire text of Manu seems to be charged with the spirit of Dharma which is the soul and guiding factor to all.

However, it should be noted with regret that Manu prescribed different rules of punishments to different castes of people.¹⁴ As a Law giver, he should have been just to all the persons because he himself accepts the supreme principle viz. Law is above all and all should be equal before law. There may be reasons behind his thinking but no where rational thinking is noticed when such different rules of punishments on the basis of caste were prescribed. It can be simply said that Manu followed in letter the social order traditionally handed down in his age without any consideration of merit or defects in that social system. However, it should be admitted that Manu's work was a source of law in ancient India and it was followed in many parts of India till recent times.

¹³ M.S. II-6

¹⁴ M.S. Chap. VIII

Now coming to the Manusmriti as the constitution of ancient India, it must be stated in the beginning that the concept of constitution is a recent one and it is mostly connected with political power in any nation and as such the principles involved in that concept cannot be made applicable to the work of Manu. This does not mean that the work has no spirit of constitution. Let us take into account the term constitution and its meaning. In the most generous sense of the term constitution^{or} every country is and has been historically except in time of revolution or other serious upheaval, governed under something that may be called constitution. Perhaps as safe and close a definition is any, is that they are fundamental laws and practices in accordance with which governments commonly operate. For the most part, constitutions are in a very real sense supreme laws.¹⁵ Moreover it has been rightly said that all human societies seem to possess an inherent capacity to develop systems of social control whereby the relations of individuals are adjusted and common interests and desires secured.¹⁶ It is clear that constitution is something to do with the state or government as implied above. In ancient India as often stated earlier, Dharma was the supreme law of the land and all the human ends must centre around Dharma alone.

¹⁵ Encyclopadia of Social Sciences Vol. FII pps 259.

¹⁶ Ibid Vol. VII-VIII pps.8.

As such we do not have any demarcating line between State and Dharma. In all ancient civilizations laws were looked upon as God-made or divine in origin and they were considered unalterable. In ancient India for the same was the belief. Frequently constitution is conceived as divinely instituted and unalterable. This is to be connected with the origin of state or king. Manu strongly believes in the divine origin of the king.¹⁷ The king is always guided by Dharma or Law books or Smriti literature. In that sense Manusmriti can be looked upon as a constitution of Ancient India.

The very 1st chapter speaks of the objective of Manu viz. prescription of laws to all classes for their religious social and political life. According to Manu Ācāra or conduct is a fundamental law of Dharma or constitution. Manu speaks of Rājadharmā in the seventh and eighth and ninth chapters in which he explains in details the origin of the king, importance of Danda, appointments of officers, ministers and ambassadors, personal and social duties of the king, his foreign policy, tax system, exemption of taxes, payment to various officers, rules regarding the disposal of property and wealth looted in the battle, various

¹⁷ Manu VII.3

cautions to kings to safeguard himself from various vices, his principal and subordinate duties, ways of punishment and judicial systems etc. All these items discussed in the work are a noteworthy features of the ancient constitution - unwritten constitution. These laws in the constitution of Manu seemed to have influenced the course of economic, social and political life of that period. We may note down some noteworthy points in the constitution of ancient India by Manu. First and foremost-the principle of law is upheld. Manu rightly says that a king should never be disrespected at any cost,¹⁸ since Monarchy was the accepted form of the government. Shri Aurobinda rightly observed that in sphere of administration, the power of the king was hedged in by the standing constitution of the Dharma¹⁹. Therefore there was little or no room for autocratic freak or monarchical violence and oppression. Manu lays down that unjust and oppressive king will be deprived of his own kingdom.²⁰ That the divine origin of the king is confined to the good king only. The fundamental duty of the king prescribed by Manu is the protection of the people.²¹ A king is ^{advised} ~~and used~~ to punish the guilty persons and protect women of all castes.²² He should

18 Manu VII.8

19 The foundations of Indian Culture pps 349-50
by Sri Aurobinda Ghosh.

20 Manu VII. 111

21 Manu VII. 144

22 Manu VIII.128 & 359

also be a protector of the orphans and afflicted and women,²³ with reference to inheritance of property rights. Manu speaks of legal heirs and relatives eligible for the same.²⁴ The king is advised by Manu²⁵ to consult the ministers separately and then all of them together. This may be compared with the cabinet meeting of the ministers in the present set up of government with reference to Law and Administration of justice according to Manu, the king was not placed above law.²⁶

This brief survey of the constitutional laws laid down by Manu in his famous work indicates that the Manusmriti can be looked upon as the unwritten constitution of ancient India in Manu's age in view of the fact that the work of Manu fulfills major requirements of the constitution as understood today. Laws of Manu were a check to the government at the same time, they served as the guide in running the administration. People could challenge the authority either religious or secular on the authority of Manu who was very specific on many social individual and political matters. Unwritten constitutions rest upon traditions and customs and the Manusmriti belonged to this category of constitution.

23 Manu.VIII-28

24 Manu-IX 158-59

25 Manu-VII.57

26 Manu VIII.336.

As it is said that constitution varies with country, time and circumstances, it affects and is affected by prevailing popular attitude. Manu categorically states that Dharma differs from age to age as seen earlier. Laws are man made laws and when society feels that laws are to be changed law givers give a serious thought to them and change them if necessary. Manu echoes the same view. He speaks of various authorities like Atri, Gautama Bhṛagu and Śaunaka²⁷ Vasiṣṭha²⁸ etc. and he also quotes indirectly views of others.²⁹ His view on Niyoge is clear when he disapproves the system itself. This speaks for Manu's independent view towards certain ancient tradition. The work of the social thinkers and legislators was concerned with normal action and practice. From this point of view, Aṅgārbindo considered the Manu's laws as the greatest and most authoritative.³⁰

Thus, it will be abundantly clear that there is a scope to look upon Manusmṛiti as an unwritten constitution of ancient India of Manu's age which consisted of laws regulating the religious and political as well as social and secular life of the people and the laws were the outcome of immemorial traditions and customs handed down.

XX

27 Manu III 16

28 Manu VIII-140

29 Manu III-261, IX-32, X-70

30 The foundations of Indian Culture pgs 298
by Sri Aṅgārbindo Ghosh.

from the days of the Veda. This was the purpose of the Smriti texts and it can be said that Manusmriti fulfilled the purpose very effectively as a law book and constitution of ancient India.

As seen earlier, Smriti professes to preserve the sacred traditions of the Veda and this was to protect the interest and security of the society on the strength of infallible law and order. Here was involved the principle that laws contained something as a proper check against individual licentious life and social caprices. There is no wonder therefore that Manu as the author of a Smriti text tried to restrain capricious human reasoning or excessive passion by invoking veneration for the authority of the Veda in the matters of law.

Manu was also a social engineer and as such he prescribed approved social as well as individual conduct to be based on the firm foundation of Dharma.

Prof. K.G. Goswami observes that smritis in fact came to be recognised as the positive guide for the contents of Hindu law and Manusmriti occupied the pre-eminent place in the list³¹ Prof Mayne considered the Manusmriti as having universal application and he pointed out that

31 Manusamhitā, Chapter III by Prof. K.G. Goswami page 15.

other Smritis were circumscribed in their local application or expressed the view of the particular School to which they belonged.³² Prof. K.G. Goswami as follows.—“The Manusmriti has exercised overpowering influence of genius on Indian life and culture for about two thousand years. Even in modern times, it seems to have inspired the great philosopher of the West Nietzsche whose Dionysian cult nourished on humanism and energism is one of the latest great world forces in culture; Nietzsche extols Manu as the propounder of affirmative religion. It is a lesson for us to note that he prescribes the study of the codes of Manu as indispensable for the rehumanising of humanity.”³³ This survey will determine the proper place of the Manusmriti in the history of Indian law.

32 Hindu Law and usages pps 21 quoted by Prof. K.G. Goswami in his Manusmriti Chapter III pps 16 and 17.

33 Manusmriti Chapter III by Prof. K.G. Goswami Introduction pps 15 and 16.

CHAPTER VII

ESTIMATE OF THE MANUSMRITI

The Manusmriti as it exists today, consists of 12 chapters of 2694 verses in anustubha metre and we find a very large range of subjects dealt with by Manu. The very first chapter sets forth the origin of the universe and theory thereof in the manner of the

Sāṅkhya school, origin of the text as taught by Manu, duties of all varṇas. It also speaks of a list of subjects dealt with in the entire text. The second chapter explains the sources of dharma, various purificatory rites from cradle to the first stage of the life viz. studentship. The third chapter explains eight forms of marriages with their respective merits and defects from social and psychological point of view and duties of householder's life. The fourth chapter further explains in details the life of a householder with reference to the ways of earning livelihood and personal habits etc. The fifth chapter deals with the subject of proper food and duties of wife and widow. The sixth chapter describes the "Vānaprastha and Sannyāsaśramaḥ." The seventh and eighth chapters deal with the duties of the king, administration of punishment, rules of warfare, tax-policy, administration of justice and eighteen titles of law, the art of state craft in war and peace. The ninth chapter speaks of duties of husband and wife, laws of inheritance twelve types of sons, strīdhana, the latter part deals with administration of justice with reference to gambling etc. The tenth chapter speaks of mixed castes and means of livelihood, four classes and their allotted duties. The eleventh chapter is devoted to different kinds of sins, major and minor and their expiations. The last chapter is a discourse on karma, fruits and kinds of birth

caused by good or bad deeds and on "Dharmas" helping the spiritual goal viz. self-realisation or knowledge of the self. Such are the contents of the Manusmriti and if we analyse them, we find that Manu has practically touched all aspects of human life in a broad sense, social, political, economic, individual and spiritual life of human beings are taken together as one unit not divorced from each other with the prime objective that a man should realise the self. The entire edifice of ethics visualised by Manu is dependent on spiritual life which was the highest aim of human life. Manu has never lost sight of this objective in the entire work. Even when he speaks of married life, as seen earlier in the chapter on Manu's views on marriage, he is of the opinion that it is not for the sake of pleasure - individual sex satisfaction but for the sake of progeny, continuation of race very necessary for the existence of society. This idea is not outdated today. Those critics who do not agree with Manu on the matters of marriage rules etc. will have to accept the noble motif attached to marriage by Manu for sane social order.

Manu believed in fourfold caste system which was the order of the age, he prescribed various duties to them, he praised Brahmins at many places. But it is very surprising to find that Manu condemned many unworthy

Brahmins and asked the people not to invite them for havya and kavya occasions in the 3rd chapter of his work. According to him worthy Brahmins of pure character, social and individual pure character, are to be honoured. Even in a democratic country, there is no harm to accept the principle to honour those who are worthy of it. But this spirit was lost, only birth in a family was taken into account in the course of time and in a caste system, it became the important factor to determine one's status. Manu's spirit seems to be different. For the well functioning of a society and sane social order, it is expected that all should do their duties in a spirit of sacrifice so that many social evils based on high-low birth will disappear. Manu's four fold caste system may not be acceptable today but the duties prescribed by Manu in case of intellectual, warrior, wealth producing and labour classes, are indeed socially meaningful and workable today if we take them in real spirit.

Manu's concept of Dharma is quite lofty in nature as seen in chapter two. Throughout the work it is clearly visible that Manu was a great champion of Dharma in its broader sense. His idea of Dharma is aiming at the total welfare of the people, material as

well as spiritual. One more characteristic of Manu's dharma is that it includes besides civil and religious matters, counsels of general prudence, safety, personal habits of cleanliness, courteous conduct. Manu says 'Dependence on others is a indeed a grief but dependence on one's self is happiness (IV-160). This is a practical suggestion. Manu also praises hard work for the sake of prosperity - (IV-137). Manu also believes that unrighteous man will not get happiness in his life here (IV 70). Manu's proverbial sentence is as follows:

'One should speak the truth, but without giving offence, although one should not compromise truth for being nice (IV-138).'

Manu's concept of Dharma is equally positive, in the sense that there should be balanced enjoyment of artha and kama so that one can attain to one's highest goal without spirit of pessimism. That is why as noted earlier, 'Nietzsche proclaimed about Manusmriti, that it has an affirmation of life, a triumphing, agreeable sensation in life and that to draw up a law book such as Manu means to permit oneself to get the upper hand to become perfect, to be ambitious of the art of living.¹ This indeed is a great tribute to the genius of Manu.

¹ The Cultural Heritage of India Vol. II by Dr. C.P. Ramaswami Aiyar, Calcutta 1969 pps 344.

About Manu's views on women and widows, we have seen that Manu put many restrictions on women and at the same time, he praised women in very glowing terms viz. women are the goddesses of the house, when they are worshipped, deities live in that house etc. Regarding freedom of women, Manu appears to be conservative but he cannot be blamed for his view. The protection and security of women is a real problem even today. Only for their safety and protection, Manu recommended women's dependence on her relatives. This spirit is more important. Manu as a law giver specifically says that women of all castes should be protected from rape or molestation and guilty persons be punished severely. (Manu 8.359). Manu also says at 8.68 that women alone should be witnesses in case of their offences tried etc. A king should be a guardian of childless woman et (8.28). As noted earlier, Manu does not accept Niyoga system. He makes a legal provision of Stridhanam the sole property of a woman not to be touched and misused by any one. (IX.194). There is no mention of a sati system. His views on marriage are open to criticism but the main idea was that a woman should not suffer because of wrong or forced marriage or thereby child should suffer. This view seems to be acceptable in modern times. As such Manu's views on women and marriage should be studied from this fresh angle, a new approach is

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Manu's social philosophy was based on pure selfless attitude and Dharma. The aim was to bring about the total welfare of the state. Nowhere we can find any selfish motive behind Manu's philosophy in his famous work.

Manu took into account all the units of the society, viz. family, members of the family and their relation with each other, marriage and morals, crimes and punishment and art of government etc. and he viewed all social

institutions viz. caste, class, stages of life, kings etc. as one grand unit of a harmonious society. No institution is inferior or superior from Manu's point of view, provided all worked together for social integrity and prosperity. Manu's social philosophy can be understood in this manner. It does not mean that his social philosophy was free from faults. We have already noted Manu's treatment to Sūdras with a rough hand and in a way this was a ~~fa~~ defect with his own philosophy that all were equal before Dharma or Law, and Law was above all.

Last but not the least is the art of administration as explained by Manu. Manu strongly believed in the divine origin of the king as it was the case in many ancient civilizations like Rome, Greek etc. Views of Max Muller and others that India has no place in the political history of the world have been considered logically by eminent scholars like Dr. U.N. Ghosal and Dr. K.P. Jayaswal² and they have proved how such views are wrong in the light of material found in the works of Manu, Kautilya and others.

Manu's views on political thought ^{are} quite marvellous, its intrinsic value lies in its realistic character.

2 a) See History of Hindu Political Theories
by Dr. U.N. Ghosal.

and
b) Hindu Polity by Dr. K.P. Jayaswal.

Manu considered concrete problems of administration, such as the conduct of the king, appointments of ministers and other officers, taxation and internal-external affairs and judicial matters. It is seen how Manu strongly felt protection to be sole justification of kingship³ and in today's context of government, protection of all is considered to be the chief aim of any type of government.

Manu looked upon politics as an integral part of Dharma and hence he included Rājadharmā in his Manusamhitā. The Rājadharmā was based on reason and experience. The divinity of the king as noted in chapter VII of this thesis is made applicable to the good king alone as can be seen from the Manusmriti. Manu quoted the examples of Vena Nahusa, Sumukha and Nimi who were perished due to avinaya.⁴ Hence he urged upon the king to behave in accordance with Dharma in his own interest as well as in the interest of the people. Hence Dr. U.N. Ghosal rightly says that the Hindu doctrine of the king's divinity then is far removed from the European theories of divine right.⁵ Manu insisted on virtues and qualifications on the appointments of officers by the king. Taxation should not be a burden on people. A king has to sacrifice his personal gains or desires in the interest of the state. However, though

³ Manu VII. 144 and chapter VIII

⁴ Manu VII.41

⁵ Hindu Political Theories (1927) by Dr. D.N. Ghosal.

these are lofty and noble ideas of the government as explained by Manu, they become irrelevant today since the idea of king is completely dead, a new form of democratic government is an established fact, the state craft has become more intricate and complicated due to various social and political forces which ultimately determine the fate of the government. But the spirit of Manu viz. to bring about the welfare of the state is significant even today.

Manusmriti as a law book and an ancient Indian constitution has also been discussed in the previous chapter. Manu prescribed laws meant for all in social religious as well as political matters on the firm foundation of Dharma. As such they were looked upon as the supreme laws of the land. In today's context some laws on caste-system based on birth, niyoga rules, religious expiations have become outdated and appear to be totally irrelevant for social progress. In a way, it is true but as Manu himself says that duties (Laws) differ from age to age we can think of socially meaningful changes. Then Manu will be properly understood.

Before we may conclude, we may also refer casually to the influence of Manusmriti outside India. Manusmriti was popular in Asian countries like Bali island,

Brahmadesh and Kamboja⁶. It is said that the administration of Brāhmi people was based on Manusmriti and that the work was a legal code book to Bali island people in the past.⁷

To come to conclusion, our study reveals that the Manusmriti is a great treasure of wisdom, it is a master piece on social science. Prof. Keith says that tone in philosophical parts in Manusmriti often rises to a grave dignity reminiscent of the Gītā.⁸ According to Manu, self realisation or atma-jñāna is the greatest dharma,⁹ for all kinds of activities. That is why the concept of dharma visualised by Manu in his work is quite grand and marvellous one which comprehends all the aims of man leading him to the final aim viz. eternal peace or bliss and for realising such noble aim, all desires and activities are adjusted and pursued in that direction. This aim of Manusmriti can be realised even today provided the very spirit of Manu is fully absorbed by society. There is no wonder when it is said - Whatever Manu said is medicine¹⁰. We may conclude in the words of Brihaspati -

6 See Bhāratīya Saṁskṛitikaśa by Joshi Mahadeva, Vol.VI.

7 Ibid

8 History of Sanskrit Literature pps. 443 by Sri A.B.Keith.

9 Manu. XII-85

10 Kulluka's Commentary on M.S. 1.1.

"Different Śāstras like Logic and grammar etc. shine so long as Manu the teacher of Dharma, artha and Mokṣa does not appear on the scene."¹¹

Such is the greatness and estimate of Manu and his work in the history of Indian literature in general . and in the history of Hindu law in particular.

¹¹ Ibid.

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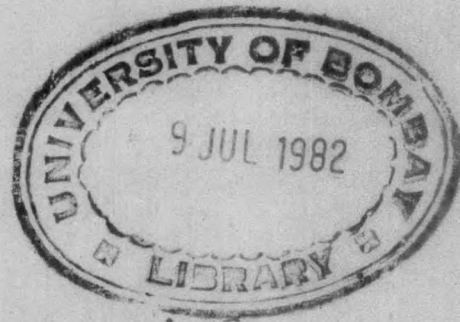
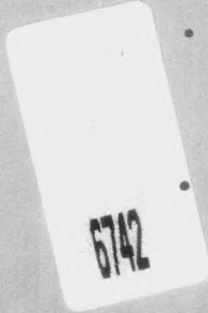
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Manu took into account all the units of the society, viz. family, members of the family and their relation with each other, marriage and morals, crimes and punishment and art of government etc. and he viewed all social

institutions viz. caste, class, stages of life, kings etc. as one grand unit of a harmonious society. No institution is inferior or superior from Manu's point of view, provided all worked together for social integrity and prosperity. Manu's social philosophy can be understood in this manner. It does not mean that his social philosophy was free from faults. We have already noted Manu's treatment to Sūdras with a rough hand and in a way this was a ~~fa~~ defect with his own philosophy that all were equal before Dharma or Law, and Law was above all.

Last but not the least is the art of administration as explained by Manu. Manu strongly believed in the divine origin of the king as it was the case in many ancient civilizations like Rome, Greek etc. Views of Max Muller and others that India has no place in the political history of the world have been considered logically by eminent scholars like Dr. U.N. Ghosal and Dr. K.P. Jayaswal² and they have proved how such views are wrong in the light of material found in the works of Manu, Kautilya and others.

Manu's views on political thought ^{are} quite marvellous, its intrinsic value lies in its realistic character.

2 a) See History of Hindu Political Theories
by Dr. U.N. Ghosal.

and
b) Hindu Polity by Dr. K.P. Jayaswal.

Manu considered concrete problems of administration, such as the conduct of the king, appointments of ministers and other officers, taxation and internal-external affairs and judicial matters. It is seen how Manu strongly felt protection to be sole justification of kingship³ and in today's context of government, protection of all is considered to be the chief aim of any type of government.

Manu looked upon politics as an integral part of Dharma and hence he included Rājadharmā in his Manusamhitā. The Rājadharmā was based on reason and experience. The divinity of the king as noted in chapter VII of this thesis is made applicable to the good king alone as can be seen from the Manusmriti. Manu quoted the examples of Vena Nahusa, Sumukha and Nimi who were perished due to avinaya.⁴ Hence he urged upon the king to behave in accordance with Dharma in his own interest as well as in the interest of the people. Hence Dr. U.N. Ghosal rightly says that the Hindu doctrine of the king's divinity then is far removed from the European theories of divine right.⁵ Manu insisted on virtues and qualifications on the appointments of officers by the king. Taxation should not be a burden on people. A king has to sacrifice his personal gains or desires in the interest of the state. However, though

³ Manu VII. 144 and chapter VIII

⁴ Manu VII.41

⁵ Hindu Political Theories (1927) by Dr. D.N. Ghosal.

these are lofty and noble ideas of the government as explained by Manu, they become irrelevant today since the idea of king is completely dead, a new form of democratic government is an established fact, the state craft has become more intricate and complicated due to various social and political forces which ultimately determine the fate of the government. But the spirit of Manu viz. to bring about the welfare of the state is significant even today.

Manusmriti as a law book and an ancient Indian constitution has also been discussed in the previous chapter. Manu prescribed laws meant for all in social religious as well as political matters on the firm foundation of Dharma. As such they were looked upon as the supreme laws of the land. In today's context some laws on caste-system based on birth, niyoga rules, religious expiations have become outdated and appear to be totally irrelevant for social progress. In a way, it is true but as Manu himself says that duties (Laws) differ from age to age we can think of socially meaningful changes. Then Manu will be properly understood.

Before we may conclude, we may also refer casually to the influence of Manusmriti outside India. Manusmriti was popular in Asian countries like Bali island,

Brahmadesh and Kamboja⁶. It is said that the administration of Brāhmi people was based on Manusmriti and that the work was a legal code book to Bali island people in the past.⁷

To come to conclusion, our study reveals that the Manusmriti is a great treasure of wisdom, it is a master piece on social science. Prof. Keith says that tone in philosophical parts in Manusmriti often rises to a grave dignity⁸ reminiscent of the Gītā.⁸ According to Manu, self realisation or atma-jñāna is the greatest dharma,⁹ for all kinds of activities. That is why the concept of dharma visualised by Manu in his work is quite grand and marvellous one which comprehends all the aims of man leading him to the final aim viz. eternal peace or bliss and for realising such noble aim, all desires and activities are adjusted and pursued in that direction. This aim of Manusmriti can be realised even today provided the very spirit of Manu is fully absorbed by society. There is no wonder when it is said - Whatever Manu said is medicine¹⁰. We may conclude in the words of Brihaspati -

6 See Bhāratīya Saṁskṛitikaśa by Joshi Mahadeva, Vol.VI.

7 Ibid

8 History of Sanskrit Literature pps. 443 by Sri A.B.Keith.

9 Manu. XII-85

10 Kulluka's Commentary on M.S. 1.1.

"Different Śāstras like Logic and grammar etc. shine so long as Manu the teacher of Dharma, artha and Mokṣa does not appear on the scene."¹¹

Such is the greatness and estimate of Manu and his work in the history of Indian literature in general . and in the history of Hindu law in particular.

¹¹ Ibid.